

## **HOTEL MANAGEMENT AGREEMENT**



## TABLE OF CONTENTS

This Table of Contents is not a part of this Hotel Management Agreement and is provided only for convenience of reference.

ARTICLE ONE	
DEFINITIONS.....	1
ARTICLE TWO	
ENGAGEMENT OF OPERATOR.....	7
ARTICLE THREE	
SERVICES TO BE PERFORMED BY OPERATOR .....	8
SECTION 3.1 – MANAGEMENT BY OPERATOR .....	8
SECTION 3.2 – PRE-OPENING SERVICES.....	8
SECTION 3.3 – INDEPENDENT CONTRACTOR.....	9
SECTION 3.4 – PERSONNEL .....	9
SECTION 3.5 – OPERATION .....	10
SECTION 3.6 – DEVELOPMENT OF WRITTEN OPERATIONAL PROCEDURES AND POLICIES FOR THE HOTEL.....	10
SECTION 3.7 – BUDGETS .....	11
SECTION 3.8 – CONTRACTS.....	12
SECTION 3.9 – COMPLIANCE WITH LEASE.....	16
SECTION 3.10 – OTHER ADDITIONAL DUTIES OF OPERATOR.....	17
ARTICLE FOUR	
ADVERTISING AND SALES PROMOTION .....	18
ARTICLE FIVE	
EXPENSES REIMBURSED BY OWNER.....	18
ARTICLE SIX	
EXPENSES TO BE BORNE BY OPERATOR.....	19
SECTION 6.1 – CORPORATE MANAGEMENT STAFF OF OPERATOR.....	19
SECTION 6.2 – HOSPITALITY CONSULTANT:.....	19
ARTICLE SEVEN	
COMPLIANCE WITH LAWS.....	19
SECTION 7.1 – COMPLIANCE BY OPERATOR.....	19
SECTION 7.2 – SALES TAX .....	19
SECTION 7.3 – ENVIRONMENTAL LAWS AND REGULATIONS.....	20

ARTICLE EIGHT	
FUNDS; DISBURSEMENT OF FUNDS .....	21
SECTION 8.1 – REVENUE AND OPERATIONS FUND OF THE BOND FUND .....	21
SECTION 8.2 – PAYMENT OF OPERATING EXPENSES:.....	21
ARTICLE NINE	
BOOKS AND RECORDS; AUDITS .....	22
SECTION 9.1 – GENERAL.....	22
SECTION 9.2 – MONTHLY REPORTS.....	22
SECTION 9.3 – ANNUAL AUDITS.....	22
SECTION 9.4 – TERMINATION.....	23
SECTION 9.5 – TAX RETURNS.....	23
ARTICLE TEN	
RESERVED.....	23
ARTICLE ELEVEN	
INSURANCE.....	23
SECTION 11.1 – INSURANCE REQUIREMENTS.....	23
SECTION 11.2 – CERTIFICATES OF COVERAGE.....	23
SECTION 11.3 – CLAIMS PROVISION .....	24
SECTION 11.4 – NO LIMITATION OF LIABILITY .....	24
SECTION 11.5 – INSURANCE BY OWNER .....	24
ARTICLE TWELVE	
MANAGEMENT FEE AND PRE-OPENING COMPENSATION .....	24
SECTION 12.1 – MANAGEMENT FEE.....	24
SECTION 12.2 – PRE-OPENING COMPENSATION .....	25
ARTICLE THIRTEEN	
OPERATOR’S TRADE NAMES, TRADEMARKS, AND SYSTEMS .....	25
SECTION 13.1 – OPERATOR’S RIGHTS.....	25
SECTION 13.2 – USE OF NAME .....	26
ARTICLE FOURTEEN	
TERM OF AGREEMENT AND TERMINATION .....	26
SECTION 14.1 – TERM.....	26
SECTION 14.2 – TERMINATION.....	26
SECTION 14.3 – ACTIONS TO BE TAKEN UPON TERMINATION.....	28



ARTICLE FIFTEEN	
REPAIRS, MAINTENANCE, CAPITAL IMPROVEMENTS, AND RENOVATIONS .....	30
SECTION 15.1 – REPAIRS, MAINTENANCE, AND CAPITAL IMPROVEMENTS .....	30
SECTION 15.2 – RENOVATIONS .....	30
ARTICLE SIXTEEN	
NOTICES .....	31
ARTICLE SEVENTEEN	
PUBLIC RECORDS .....	31
ARTICLE EIGHTEEN	
ASSIGNMENT OR TRANSFER BY OR CHANGE IN OWNER .....	31
SECTION 18.1 – ASSIGNMENT BY OPERATOR: .....	31
SECTION 18.2 – ASSIGNMENT OR TRANSFER BY OWNER .....	32
SECTION 18.3 – TRANSFER COSTS .....	32
ARTICLE NINETEEN	
INDEMNIFICATION AND LIMITATION OF LIABILITY .....	32
SECTION 19.1 – LIMITATION OF LIABILITY .....	32
SECTION 19.2 – INDEMNIFICATION .....	32
SECTION 19.3 – PERSONAL GUARANTEES .....	33
SECTION 19.4 – SURVIVAL .....	33
ARTICLE TWENTY	
CLAIMS; MEDIATION .....	34
ARTICLE TWENTY-ONE	
QUALIFIED MANAGEMENT AGREEMENT .....	34
SECTION 21.1 – QUALIFIED MANAGEMENT AGREEMENT .....	34
SECTION 21.2 – RESERVATION SYSTEM; CHAIN SERVICES .....	35
ARTICLE TWENTY-TWO	
MISCELLANEOUS PROVISIONS .....	35
SECTION 22.1 – REPRESENTATION AND WARRANTY OF OWNER .....	35
SECTION 22.2 – NO PARTNERSHIP OR JOINT VENTURE .....	36
SECTION 22.3 – INCORPORATION OF DOCUMENTS .....	36
SECTION 22.4 – SUCCESSORS AND ASSIGNS BOUND .....	36
SECTION 22.5 – ADDITIONAL DOCUMENTS .....	36
SECTION 22.6 – GOVERNING LAW .....	37
SECTION 22.7 – SEVERABILITY .....	37
SECTION 22.8 – COMPLETE AGREEMENT .....	37
SECTION 22.9 – NO THIRD PARTY BENEFIT .....	37
SECTION 22.10 – NONWAIVER .....	37
SECTION 22.11 – PAYMENT OF CLAIMS BY OWNER .....	37

SECTION 22.12 – CONSTRUCTION OF AGREEMENT .....	38
SECTION 22.13 – COUNTERPART EXECUTION.....	38
EXHIBIT A	
INSURANCE.....	A-1
EXHIBIT B	
PRE-OPENING BUDGET .....	B-1
EXHIBIT C	
REIMBURSEMENT REQUEST .....	C-1
EXHIBIT D	
MAP .....	D-1
EXHIBIT E	
LEASE NO. DACW41-1-97-233 .....	E-1
EXHIBIT F	
REGULATIONS.....	F-1
EXHIBIT G	
REQUEST FOR APPROVAL OF CONTRACT AND BOND COUNSEL OPINION .....	G-1
EXHIBIT H	
REQUEST FOR APPROVAL OF CONTRACT .....	H-1
EXHIBIT I	
PROPRIETARY EMPLOYEE POLICIES .....	I-1
EXHIBIT J	
BONUS PLAN.....	J-1
EXHIBIT K	
GUARANTY .....	K-1

## HOTEL MANAGEMENT AGREEMENT

**THIS HOTEL MANAGEMENT AGREEMENT**, herein this "Agreement", is made and entered into effective the 28th day of January, 2008 (the "Commencement Date"), by and between Iowa Department of Natural Resources, an executive branch department of the State of Iowa, with its principal offices located at Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034 herein "Owner", and Central Group Management, LLC, with its principal offices located at St. Cloud, Minnesota herein "Operator."

WHEREAS, Owner proposes to design, plan, develop, bid, and construct a destination State Park known as Honey Creek Resort State Park ("Honey Creek Resort State Park") in Appanoose County, Iowa, to co-exist in a delicate, natural environment, and Owner issued a Request for Proposal ("RFP") for management services regarding the operation of the Honey Creek Resort State Park;

WHEREAS, Operator is engaged in the operation of hotels, conference centers and related facilities and are experienced in various phases of hotel development and operations;

WHEREAS, Operator was selected as the successful bidder to provide management services for the operation of the Honey Creek Resort State Park;

WHEREAS, Owner is desirous of utilizing the services and experience of Operator in connection with the operation and management of the Hotel (as defined herein), including pre-opening services, and Operator desires to render such services, all upon the terms and conditions set forth hereinafter;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and Operator agree as follows:

### ARTICLE ONE DEFINITIONS

For the purposes of this Agreement, unless another meaning is implicitly indicated by the context, the following terms shall have the following meanings:

"**ACT**" means Iowa Code chapter 463C (2007), as amended from time to time, and the administrative rules enacted thereto.

"**ANNUAL OPERATING BUDGET**" shall have the meaning set forth in Section 3.7.1.

"**BOND FUND**" means the Honey Creek Premier Destination Park Bond Fund established with the Treasurer of the State of Iowa pursuant to the Indenture and Iowa Code section 463C.11 (2007) as amended from time to time.

"**BUSINESS DAY**" means any day other than a Saturday, Sunday or legal holiday for the Owner.

**"CAPITAL EXPENDITURES"** means any expenditure for the long-term betterment or improvement of the Hotel including any renovation, rehabilitation, expansion, alteration, change, addition, or improvement in or to the interior or exterior of the Hotel.

**"CHANGES IN TAX LAW"** means, after the Commencement Date, any amendment to the Code, any temporary, proposed, or final regulation promulgated by the United States Department of the Treasury, any ruling, procedure, notice, announcement, technical advice memorandum, field service advice, or similar guidance issued by the Internal Revenue Service concerning Section 141 of the Code (even if not legally precedential), or any change, clarification, or elaboration in any judicial decision, that would cause Bond Counsel to be unable to deliver an Opinion of Bond Counsel to the effect that, assuming the change had been effective as of the date of issuance, interest on tax-exempt financing issued to finance the Hotel would be excludible from gross income of the holders. Change in tax law shall include only those changes which apply retroactively to the tax-exempt financing initially issued to finance the Hotel.

**"CODE"** means the Internal Revenue Code of 1986, as it may be amended, to the extent any amendment applies retroactively to tax-exempt financing issued to finance the Hotel. Any reference to a provision of the Code shall include the applicable regulations of the Department of the Treasury promulgated or proposed with respect to such provision.

**"COMMENCEMENT DATE"** means January 28, 2008.

**"COMPENSATION"** means all costs of employment of all Hotel Employees, including direct salaries and wages paid to, or accrued for the benefit of such employees; bonuses and incentive compensation; all fringe benefits payable to, or accrued for the benefit of such employees, including pension or retirement contributions, group life, accident and health insurance premiums, profit sharing, disability and other similar benefit.

**"CONSTRUCTION MANAGEMENT AGREEMENT"** means the AIA Document B801 Cma-1992, Standard Form of Agreement Between Owner and Construction Manager, dated as of March 9, 2006 between the Construction Manager and the Owner.

**"CORPORATE MANAGEMENT STAFF"** means agents, officers, executives and employees of the Operator who are not directly employed at the Hotel and are located at Operator's corporate offices and who may provide supervisory, consulting, administrative or legal services to Operator in regular course of business of Operator.

**"EMPLOYEE POLICIES"** means those policies defined in Section 3.4.3.

**"ENDANGERED SPECIES"** means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range, including those listed in 571 Iowa Admin. R. 77.2, as amended from time to time.

**"ENVIRONMENTAL POLICIES"** mean those policies defined in Section 3.6.2.

**"EXCLUDED CONTRACTS"** shall mean a Contract with a Person that (a) the Owner concluded does not result in private business use of the Hotel within the meaning of Treas. Reg. § 1.141-3, as amended from time to time, (b) was specifically approved by Owner, or (c) those

Contracts listed in Section 3.8.4. Owner and Operator may modify the preceding definition of Excluded Contracts upon receipt of an Opinion of Bond Counsel.

**"EXECUTIVE STAFF"** means the General Manager, Sales Manager, Marketing Manager, Housekeeping Manager, Food and Beverage Manager, Golf Manager and Golf Course Superintendent or any individual employed by the Operator at the Hotel having a comparable title for such responsibility for the Hotel.

**"FISCAL YEAR"** means each twelve-month period from July 1 through June 30 of the next calendar year, except that the first Fiscal Year shall be that period beginning on the Commencement Date and ending on the following June 30.

**"FIXED ASSET SUPPLIES"** means items included within "Property and Equipment" under the Uniform Systems of Accounts which may be consumed in the operation of the Hotel or are not capitalized including, but not limited to, linen, china, glassware, tableware, uniforms and similar items whether used in connection with public space or guest rooms.

**"FIXED EXPENSES"** means (1) debt service payments and deposits to the Debt Service Reserve Fund, the Rebate Fund, the Operating Reserve Fund and the Capital Improvement Fund, as each is defined in and required by the Indenture and (2) insurance payments and expenses required under Article Eleven herein or by the Indenture.

**"FURNITURE, FIXTURES AND EQUIPMENT"** means furniture, furnishings, light fixtures, equipment, fixtures, and personal property of every kind and nature located in or upon the Hotel.

**"GAAP"** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Commencement Date.

**"GROSS SALES"** means all receipts, revenues, income, and proceeds of sales of whatever kind or nature received by Operator or Owner directly or indirectly from the operation of the Hotel.

**"GUEST RECORDS"** means guest lists, reservation information, data and other information pertaining to the guests or customers of the Hotel, which shall be exclusively owned by the Owner.

**"GUEST ROOM"** shall mean a separately keyed lodging unit of the Lodge or separately keyed cabin.

**"HOTEL"** means the Owner's leasehold interest on the real property, improvements, and all appurtenances known as the "Honey Creek Resort State Park" in Appanoose County, Iowa, to co-exist in a delicate, natural environment as identified in the footprint map attached

hereto as Exhibit D, including, without limitation and whose ultimate location within the footprint map may change, the following:

- a. a 105-room lodge with restaurant and lounge overlooking Rathbun Lake (the "Lodge");
- b. a 15,000 square-foot indoor family aquatic center (the "Aquatic Center");
- c. a 5,000 square-foot conference/retreat center (the "Conference Center" and, together with the Lodge and the Aquatic Center, the "Main Lodge Facility");
- d. an 18-hole golf course/club house/practice facility;
- e. 28 family and group cabins and to the extent the following facilities are built;
- f. an upscale 20-30 site recreational vehicle campground equipped with full-service utility hook-ups;
- g. paved or asphalt biking and pedestrian trails;
- h. enclosed picnic shelters for family and group gatherings;
- i. a guest boat ramp and docking facilities; and
- j. a pedestrian bridge to facilitate access and trail linkages between the existing Honey Creek State Park and the Hotel;

including guestrooms, lounges, kiosks, restaurants, convention facilities, all Furniture, Fixtures and Equipment, parking areas, walkways, roadways, and all other aspects of the Honey Creek Resort State Park complex, except those areas covered by other agreements or contracts, the activity center and all rugged or ungroomed trails. The Owner has the exclusive right to amend this definition of Hotel.

**"HOTEL EMPLOYEES"** means all employees of the Operator employed at the Hotel, but excluding Corporate Management Staff.

**"HOTEL POLICIES"** means those policies defined in Section 3.6.1.

**"HOTEL STANDARDS"** means, at minimum, the generally equivalent facilities or level of service expected at a three-star hotel.

**"INCOME BEFORE MANAGEMENT FEE AND FIXED EXPENSES"** means such term as set forth in the Owner's audited financial statements.

**"INDENTURE"** means the Indenture of Trust dated as of October 1, 2006 among the Honey Creek Premier Destination Park Authority, the Owner, the Treasurer of the State of Iowa and Bankers Trust Company, National Association.

**"INITIAL OPERATING BUDGET"** means the initial operating budget to be prepared pursuant to Section 3.7.2.

**"INVENTORIES"** means "Inventories" as defined in the Uniform System of Accounts, such as, but not limited to, provisions in storerooms, gift shops, the pro-shop, refrigerators, pantries and kitchens; beverages in wine cellars, bars and restaurants; other merchandise intended for sale; fuel; mechanical supplies; stationary; and other expensed supplies and similar items.

**"LEASE"** means Lease No. DACW41-1-97-233 between the Secretary of the Department of the Army and the Owner, as amended by the Supplemental Agreement No. 1, the Supplemental Agreement No. 2, and as further supplemented and amended from time to time. See Exhibit E.

**"MANAGEMENT FEE"** means an amount designated to be paid to Operator as more fully set forth in Section 12.1.

**"OPERATING EXPENSES"** means expenses and deductions authorized to be paid in accordance with the Pre-Opening Budget, Initial Operating Budget, or the Annual Operating Budget or as otherwise approved by Owner, arising out of the actual day-to-day operation of the Hotel, including, without limitation, the following:

- A. All Compensation, payroll taxes, unemployment insurance contributions, social security taxes, worker's compensation, and all other employee-related expenses;
- B. Charges for heat, water, light, power, telephone, and other utilities and services;
- C. Repairs to and maintenance of the Hotel excluding, however, Capital Expenditures;
- D. Any amounts due Operator pursuant to Articles Twelve and Eighteen of this Agreement;
- E. Legal fees and fees of any independent certified public accountant for services relating to the operation of the Hotel and its facilities or this Agreement including Opinions of Bond Counsel, excluding any fees associated with the negotiation or preparation of this Agreement, and any other professional fees and costs;
- F. Expenditures for all marketing, advertising, sales promotion, and public relations;
- G. All administrative and general expenses, including, without limitation, reasonable charges for data processing performed by Operator, but excluding any compensation, costs or other expenses of the Corporate Management Staff;
- H. Any leasehold rental expenses for equipment, including, without limitation, telephone, televisions, and satellite dishes;

I. Debt service (interest and principal) on loans related to the operation of the Hotel;

J. Property taxes and assessments and payments in lieu of taxes;

K. Cost of any audits requested or desired by Owner or Operator;

M. All reasonable business, entertainment, travel, and other reasonable expenses associated with the operation of the Hotel incurred by Operator and the Hotel Employees;

N. Insurance expenses pursuant to Article Eleven hereof; and

O. All other reasonable proper and necessary expenses and deductions, of whatever kind or nature, arising out of the operation of the Hotel.

**"OPERATING RESERVE FUND"** means the fund by that name established pursuant to the Indenture and held by the Treasurer.

**"OPERATOR"** means Central Group Management, LLC.

**"OPINION OF BOND COUNSEL"** means a written opinion of nationally recognized bond counsel selected by Owner.

**"OTHER OPERATOR PROPERTIES"** means all other hotels and resorts owned, operated or managed by the Operator, including but not limited to those specifically listed in the Operator's Proposal as defined in Section 22.3.

**"OWNER"** means Iowa Department of Natural Resources, its successors and assigns.

**"OWNER PROPERTY"** includes the Hotel; Inventories; Fixed Asset Supplies; Furniture, Fixtures and Equipment; Guest Records; Employee Policies not otherwise identified on Exhibit I hereto; Hotel Policies; Environmental Policies; Procurement Policies; all policies and procedures developed by Owner and Operator for the operation and maintenance of the Hotel; Hotel equipment, Hotel supplies, Hotel fixtures and Hotel software purchased for the Hotel or Operator and paid for or reimbursed by Owner; and any and all items purchased for the Hotel or Operator and paid for or reimbursed by Owner.

**"PERSON"** means a corporation, association, partnership, limited liability company, joint venture, trust, organization, business, individual or government or any governmental agency or political subdivision thereof.

**"PRE-OPENING BUDGET"** means the budget for pre-opening expenses to be prepared pursuant to Section 3.7.3.

**"PRE-OPENING COMPENSATION"** means the pre-opening compensation defined in Section 12.2.

**"PROCUREMENT POLICIES"** means those policies defined in Section 3.6.3.



**"REVENUE AND OPERATIONS FUND"** means the Revenue and Operations Fund established in the Indenture.

**"REVENUE PROCEDURE 97-13"** means Revenue Procedure 97-13 issued by the Department of Treasury setting forth conditions under which a management contract does not result in private business use of bond-financed facilities.

**"SCHEDULED OPENING DATE"** shall mean the first day on which the Main Lodge Facility is open for business to paying guests, which is anticipated to occur in August 2008.

**"SUBSTANTIAL COMPLETION DATE"** means the date upon which Architect has certified under AIA Document A201/Cma between the Owner and Architect dated as of February 21, 2007, as incorporated in the AIA Document A101/Cma between the Owner and Hanssen Company Inc. dated as of July 17, 2007, that the construction of the Main Lodge Facility is substantially complete, such date to be accepted by Owner.

**"SYSTEMS"** means any systems, computer software, methods, procedures, techniques, trade secrets, know-how, or any materials or devices constituting proprietary information owned by Operator with respect to the Hotel; provided, the Guest Records shall be not be considered part of the Systems. The term "Systems" shall not include any systems, computer software, methods, procedures, techniques, trade secrets, or any materials or devices paid by or reimbursed by Owner for the Hotel (as an Operating Expense or otherwise).

**"TERMINATION"** means the expiration or sooner cessation of this Agreement.

**"THREATENED SPECIES"** means any species which is likely to become an endangered species with the foreseeable future throughout all or a significant portion of its range, including those listed in 571 Iowa Admin. R. 77.2, as amended from time to time.

**"TRADE NAMES"** means the names, trade names, trademarks, and service marks of Operator, or any variations thereof when used alone or in conjunction with some other word or words, or some other design, and shall exclude names, trade names, trademarks and service marks of Owner, the State of Iowa, the Honey Creek Resort State Park and the Hotel and the name and use of "Honey Creek Resort State Park" and "Honey Creek" or any reasonable variation thereof.

**"UNIFORM SYSTEM OF ACCOUNTS"** means the Uniform System of Accounts for Hotels, Eighth Edition, as recommended and prescribed by the Hotel Association of New York City, Inc., and adopted by the American Hotel Association of the United States, as revised from time to time and as modified by applicable provisions of this Agreement.

## **ARTICLE TWO ENGAGEMENT OF OPERATOR**

On the terms and subject to the conditions of this Agreement, Owner hereby engages Operator as the exclusive operator of the Hotel, and Operator hereby undertakes and agrees to

perform, either directly or through its subcontractors, the services set forth in this Agreement and to comply with all of the provisions of this Agreement.

### **ARTICLE THREE**

#### **SERVICES TO BE PERFORMED BY OPERATOR**

**SECTION 3.1 – MANAGEMENT BY OPERATOR:** On and after the Scheduled Opening Date, Operator shall have the responsibility and duty to direct, supervise, manage, and operate the Hotel and to determine the programs and policies to be followed in connection therewith, all in accordance with the provisions of this Agreement and the Lease. However, Operator agrees to consult with and obtain the approval of Owner on all major programs and policy matters which could substantially affect the type, character, or financial performance of the Hotel, including but not limited to, those programs and policies set forth in Sections 3.4.3, 3.6.1, 7.3.1 and 7.3.6. Operator acknowledges that the operation and maintenance of the Hotel must be in accordance with the Lease, and agrees to comply with all applicable provisions of the Lease as provided in Section 3.9.

**SECTION 3.2 – PRE-OPENING SERVICES:** Operator shall perform the following pre-opening services:

- (a) Develop and submit to Owner for approval a Pre-Opening Budget as required by Section 3.7.3 and schedule of pre-opening activities. Operator shall continually revise and submit for approval to Owner changes to the Pre-Opening Budget and schedule of pre-opening activities, such schedule to include periodic meetings with the Owner.
- (b) Provide monthly progress reports to Owner regarding the Pre-Opening Budget and the schedule of pre-opening activities.
- (c) Recruit, train and employ the staff required for the Hotel.
- (d) Negotiate necessary contracts and leases for retail and lobby space within the Hotel.
- (e) Undertake pre-opening promotion, advertising and marketing, including opening celebrations and related activities.
- (f) Test and, if necessary, implement modifications of the Hotel operations.
- (g) Apply for the initial licenses and permits required for the operation of the Hotel as contemplated by and in accordance this Agreement.
- (h) Be responsible for the design, specification and purchasing, as well as managing the delivery and installation of all Furniture, Fixtures and Equipment.
- (i) In general, render such other miscellaneous services incidental to the preparation and organization of the Hotel's operations as may be reasonably required for the Hotel to be adequately staffed and capable of management on the Scheduled Opening Date and during the first Fiscal Year, including development and implementation of marketing and sales programs, accounting and budgeting controls and similar operational items.

**SECTION 3.3 – INDEPENDENT CONTRACTOR:** The status of Operator shall be that of an independent contractor. The Operator, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any agency, division or department of the State of Iowa. Neither Operator nor its employees shall be considered employees of Owner or the State of Iowa for federal or state tax purposes. Owner will not withhold taxes on behalf of Operator (unless required by law).

**SECTION 3.4 – PERSONNEL:**

3.4.1. General. Operator shall employ, discharge, promote and supervise all Hotel Employees necessary, desirable, and appropriate for the operation of the Hotel. The Executive Staff shall be properly qualified for their positions and the direct compensation payable to such persons shall be comparable to the direct compensation paid to such persons employed at comparable Other Operator Properties, taking into account the location and size of the Hotel.

Owner shall have the right but not the obligation to approve the selection of General Manager, including the right to interview candidates for such positions; provided that Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers notice of its disapproval of such appointment within five Business Days after Operator's delivery to Owner of (a) a written summary of such individual's professional experience and qualifications and (b) notice of Operator's desire to make an offer of employment to such individual. If the Owner disapproves an applicant that Operator would have otherwise extended an offer of employment, Owner shall indemnify Operator in accordance with Section 19.2.2 for any claims arising directly from Owner's disapproval of such applicant.

3.4.2. Operator as Employer. All Hotel Employees shall be employees of Operator, and all compensation to such employees shall be paid by Operator. Compensation shall be paid in accordance with Article Eight. Operator shall establish appropriate payroll accounts covering all Hotel Employees. Operator shall be solely responsible for all compensation paid to Corporate Management Staff for any services provided under this Agreement. Operator will create a special purpose entity to employ the Hotel Employees; however in so doing, Operator shall not abrogate any term, duty, obligation or covenant owed to Owner under this Agreement and Operator shall be solely responsible and liable to Owner under this Agreement.

3.4.3. Employee Policies. Operator shall develop written employee policies and procedures, including, without limitation, Compensation, and other salaries, wages, evaluations, overtime, vacations, leaves of absence, employee benefits, and non-discrimination (collectively, "Employee Policies"), and such Employee Policies shall be submitted to the Owner for approval on an annual basis along with the Annual Operating Budget. Operator shall have the burden of providing information and evidence to Owner that Compensation is reasonable and comparable to the market area and Other Operator Properties of comparable size and location. Initial Employee Policies shall be submitted to Owner for final approval, such final approval to be obtained within 120 days after the Commencement Date. Operator shall comply with all Employee Policies. All Employee Policies developed specifically for the Hotel and not otherwise specifically identified on Exhibit I hereto shall be Owner Property.

3.4.4. Assignment of Hotel Employees. At the discretion of Operator, the Hotel Employees may be temporarily assigned to other properties operated by Operator provided that such temporary assignment does not materially affect business operations at the Hotel; provided, however, that the Hotel shall be reimbursed therefor by Operator or the property to which the employee was assigned at a rate of one hundred twenty percent (120%) of the employee's gross salary for the period of temporary assignment. The payment aforescribed shall be full and final reimbursement to the Hotel relating to the temporarily assigned employee's salary, withholdings, plan contributions, health insurance and other benefits, and the like. With prior consent of the Owner, Owner agrees to reimburse Operator for all travel expenses to and from the Hotel for such Hotel Employees.

3.4.5. Business Expenses. Operator shall be paid or reimbursed for all reasonable business expenses of Hotel Employees, including travel expenses, in accordance with the Annual Operating Budget, Initial Operating Budget or Pre-Opening Budget (as the case may be) or as otherwise approved by Owner in accordance with Article Eight. Reasonable business expenses shall be determined in accordance with the applicable budget then in effect and with standard practices and travel policies of Other Operator Properties of similar size and location to the Hotel.

3.4.6. Bonus Pool Based on Performance. Any bonus compensation paid to Hotel Employees shall be paid by Operator pursuant to the policy set forth on Exhibit J (the "Bonus Plan"). Operator shall not amend or deviate from the Bonus Plan without approval by Owner and a favorable Opinion of Bond Counsel.

3.4.7. Owner Complaint Procedure. Operator shall establish a procedure for Owner to report any unsatisfactory performance or conduct of any Hotel Employee. Operator shall give due consideration to such reports; however, all disciplinary decisions shall rest solely with Operator.

**SECTION 3.5 – OPERATION:** Operator shall operate the Hotel and all of its facilities and activities in such manner as is customary and usual and in accordance with the Hotel Standards, including supervisory services, and shall provide such facilities and services at the Hotel as customary under the Hotel Standards and consistent with the terms of this Agreement.

#### **SECTION 3.6 – DEVELOPMENT OF WRITTEN OPERATIONAL PROCEDURES AND POLICIES FOR THE HOTEL**

3.6.1. General Operating Procedures. In addition to Employee Policies, Operator shall prepare and develop written procedures and policies for the operation of the Hotel, including but not limited to procedures and policies for the following: (a) guest rates, fees and charges at the Hotel, including all lodging and recreational activities; (b) guest policies including compliant procedures and intervention policies by Operator; (c) guest and employee comment procedures and Operator review and responsiveness thereto; (d) emergency management plans and policies, including periodic meetings with local emergency services providers; (e) waste management policies, including coordination with adjacent parks; (f) landscaping and ground and exterior maintenance policies and protocols; and (g) other major programs and policy matters which could substantially affect the type, character, or financial performance of the Hotel (collectively "Hotel Policies"). All initial Hotel Policies shall be

subject to final approval by Owner, such final approval to be obtained within 90 days after the Commencement Date. Operator shall review the Hotel Policies on an annual basis and shall make recommendations for any revisions to Owner with the submission of the Annual Operating Budget. All amendments to the Hotel Policies shall be approved by Owner. Operator shall comply with all Hotel Policies.

3.6.2. Environmental Policies. Owner shall develop certain environmental compliance policies and procedures set forth in Section 7.3.2 (collectively, the "Environmental Policies") in consultation with Operator; however the Environmental Policies shall not be subject to approval by Operator. Owner shall provide written notice to Operator of any amendments to the Environmental Policies. Operator shall comply with the Environmental Policies.

3.6.3. Procurement Policies. Operator shall develop policies and procedures for the procurement of all Fixed Asset Supplies, Inventories, Furniture, Fixtures and Equipment, operating supplies and other consumables for the operation of the Hotel (collectively, the "Procurement Policies"), in consultation with Owner. The Procurement Policies shall be subject to final approval by Owner, such final approval to be obtained within 60 days after the Commencement Date. Operator shall review the Procurement Policies on an annual basis and shall make recommendations for any revisions to Owner with the submission of the Annual Operating Budget. All amendments to the Procurement Policies shall be approved by Owner. Operator shall comply with all Procurement Policies.

3.6.4. Dispute Resolution. The parties shall use their best efforts to agree upon the Hotel Policies or any amendment thereto. In the event the parties cannot agree upon the Hotel Policies or any amendment thereto after such best efforts, Owner shall make the final determination on any dispute, without recourse by Operator.

## **SECTION 3.7 – BUDGETS:**

3.7.1. Annual Operating Budget. Pursuant to Section 8.23 of the Iowa Code, Owner is required to submit its annual budget to the Governor's Office by each October 1 preceding the Fiscal Year. Operator shall submit to Owner for approval pursuant to Section 3.7.4 a proposed Annual Operating Budget for each Fiscal Year on or before July 1 preceding such Fiscal Year, commencing with the July 1 immediately succeeding the Scheduled Opening Date, and an updated proposed Annual Operating Budget on or before March 1 preceding such Fiscal Year. Each proposed Annual Operating Budget shall include estimates of all revenues and any and all amounts needed for Capital Expenditures and Operating Expenses for the Fiscal Year and for each month within the Fiscal Year and shall be accompanied with a narrative management summary.

3.7.2. Initial Operating Budget. Operator shall submit to Owner an Initial Operating Budget for the period commencing on July 1, 2008 through June 30, 2009 not later than thirty days after the Commencement Date. The proposed Initial Operating Budget shall include estimates of all revenues and any and all amounts needed for Capital Expenditures, Operating Expenses and pro rata Pre-Opening Compensation for the period covered by such budget and for each month within such period and shall be accompanied with a narrative management summary.

3.7.3. Pre-Opening Budget. Operator shall submit to Owner a Pre-Opening Budget for the period commencing on the Commencement Date to and including the Scheduled Opening Date not later than thirty days after the Commencement Date. The Pre-Opening Budget and any amendments thereto shall include a detailed itemization by date, item activity, quantity and per item/activity cost of all Pre-Opening Compensation and all supplies (including Fixed Asset Supplies), Inventories and other goods and consumables not otherwise itemized as a construction cost in any construction budget pursuant to the Construction Management Agreement necessary for the Hotel to be fully operational and open for business on the Scheduled Opening Date and shall be accompanied by a narrative management summary. Any amendments to the Pre-Opening Budget shall be subject to approval by Owner. The Pre-Opening Budget, after approval by Owner, shall be attached hereto as Exhibit B and made part of this Agreement.

3.7.4. Approval of Budgets. All proposed Annual Operating Budgets and the Initial Operating Budgets shall be subject to approval of Owner, it being contemplated that each such budget shall be agreed upon by Owner and Operator within 45 days after submission of the same by Operator to Owner.

3.7.5. Amendment of Budgets after Final Approval. Any proposed amendments submitted by Operator after final approval by both the Owner and Operator shall be submitted in writing to Owner along with a narrative management summary detailing the necessity of the amendment. The Owner shall have sole discretion to approve any amendment to the respective budget based upon available revenues, necessity of the amendment and its business judgment.

3.7.6. Dispute Resolution. The parties shall use their best efforts to agree upon the Initial Operating Budget and the Annual Operating Budget, and any amendments thereto and to the Pre-Opening Budget and shall develop such budgets to meet the covenants and requirements of the Indenture and any document related thereto. In the event the parties cannot agree upon the Initial Operating Budget and Annual Operating Budget, and any amendments thereto and to the Pre-Opening Budget after such best efforts, Owner shall make the final determination on any dispute, without recourse by Operator.

## SECTION 3.8 – CONTRACTS

3.8.1. Operator shall negotiate, in the best interests of Owner, contracts, leases, licenses, permits, and concession agreements incidental to the operation of the Hotel and required in the ordinary course of business in operating the Hotel or customary under the Hotel Standard in accordance with the Annual Operating Budget, the Pre-Opening Budget or Initial Operating Budget (as the case may be) including, without limitation, contracts for electricity, gas, telephone, security services, vermin extermination, water, janitorial services, elevator and boiler maintenance, air conditioning maintenance, master television service, laundry and dry cleaning, and other services that Operator deems advisable. Operator represents to Owner that Operator has reviewed and is familiar with the applicable requirements of Section 141 of the Code and Revenue Procedure 97-13.

3.8.2. Except as provided in Article Eleven, all contracts, leases, licenses, permits and concession agreements (for purposes of Section 3.8, collectively, "Contracts" and individually a "Contract") shall be in the Owner's name. Except for Excluded Contracts as

defined in Section 3.8.4, all Contracts, and amendments and modifications thereto, shall be subject to Owner's review and approval pursuant to Section 3.8.5. All Excluded Contracts shall be subject to Owner's review and approval pursuant to Section 3.8.6.

3.8.3. Operator shall include in all Contracts a standard provision granting Owner a right to terminate the Contract, without penalty, on thirty (30) days notice, upon receipt from Owner of an Opinion of Bond Counsel that such contract is inconsistent with Revenue Procedure 97-13 or will otherwise result in private business use of the Hotel for purposes of Section 141 of the Code.

3.8.4. Owner and Operator agree that, as of the Commencement Date, a Contract falling within any of the following categories would be an "Excluded Contract":

3.8.4.1 Contracts solely for the purchase of goods or commodities, including electricity, gas, or other heating fuel, and food and beverage inventories and not for the provision of services.

3.8.4.2 Any arrangement (including an arrangement having a multiple-year term) for the use of Guest Rooms, campgrounds or docking facilities that are available to the general public during the term of such arrangement, including all renewal options, for a total number of days not exceeding 200 if such use is at rates available to other individuals or similar groups in similar circumstances, provided, that the term of any renewal shall not be included in such calculation if the renewal option is subject to the approval of both parties.

3.8.4.3 Contracts that are purely incidental to the primary function of operating the Hotel as contemplated by Section 1.141-3(b)(4)(iii)(A) of the Treasury Regulations, such as contracts for janitorial services, trash removal, exterminator services, elevator, boiler, and other machinery and equipment maintenance, office equipment repair or billing, landscaping, laundry, linen supply, uniform supply, floral arrangements, cable television, telephone service and internet service.

3.8.4.4 Any space lease relating to any of the buildings of the Hotel with a term of one year or less; provided, that the aggregate square footage leased pursuant to all space leases cannot exceed 3% of the gross square footage of all buildings of the Hotel.

3.8.4.5 Any arrangement (including an arrangement having a multiple-year term) solely for the use of the Conference Center or other meeting rooms of the Hotel if, during the term of such arrangement, including all renewal options, the total number of days of permitted use does not exceed 100 and if such use is at rates available to other similar groups in similar circumstances, provided, that the term of any renewal shall not be included in such calculation if the renewal option is subject to the approval of both parties.

3.8.4.6 Any arrangement regarding the placement of vending machines, pay telephones, kiosks, automatic teller machines or advertising displays within the Hotel and other uses that do not involve the transfer of possession and control

of space that is separated from other areas by walls, partitions, or other physical barriers; provided, that the space devoted to all such incidental uses cannot exceed two and one-half percent 2.5% of the total space of the buildings of the Hotel; and further provided that the arrangement is not with a person that is using the Hotel for any purpose other than uses described in Section 3.8.4.1, .2, .3 or .4. Space devoted to incidental uses described in this Section 3.8.4.4 is not counted toward the square foot limitation on space leases provided in Section 3.8.4.4.

3.8.4.7 Contracts having a term, including all renewal options, that does not exceed 50 days but only if the arrangement is a negotiated arm's-length arrangement and compensation under the arrangement is for market value; provided, that the term of any renewal shall not be included in such calculation if the renewal option is subject to the approval of both parties.

3.8.4.8 To the extent not addressed by paragraphs 3.8.4.1 through 3.8.4.7 above, service contracts with a service provider (i) under which the service provider shall be paid a periodic, fixed, stated dollar amount for the services rendered for a specified time period (that may be subject to automatic adjustment according to a specified, objective, external standard that is not linked to the output or efficiency of the Hotel as a whole, such as the GDP Deflator), and (ii) having a term not exceeding five years.

3.8.4.9 To the extent not addressed by paragraphs 3.8.4.1 through 3.8.4.8 above, service contracts with a service provider (i) under which the service provider shall be paid a fee based on a unit of service provided specified in the contract, and (ii) having a term not exceeding two (2) years. By way of examples and not limitation, this subsection would apply to (i) a contract with a valet parking service under which the operator is paid a stated dollar amount for each car parked, (ii) a contract with an operator of a ground transportation service under which the operator is paid a stated dollar amount for each mile that a Hotel guest is transported, or (iii) a contract with a catering company under which the catering company (A) shall utilize the catering kitchen at the Hotel to prepare and serve breakfast, lunch, and/or dinner for the attendees of an event held at the Hotel and (B) shall be paid a stated dollar amount for each individual meal served. A contract that is automatically renewed at the end of each two (2) year period absent cancellation by either party satisfies the term limitation stated in subpart (ii) hereof.

3.8.4.10 To the extent not addressed by paragraphs 3.8.4.1 through 3.8.4.9 above, service contracts with a service provider (i) under which the service provider shall primarily provide services to third parties (i.e., Hotel guests or attendees of events at the Hotel) rather than to Operator, (ii) the service provider shall be paid compensation based on a specified fee (or percentage of the fee charged to third parties) for the service provided that is collected by Operator from the third party, and (iii) having a term not exceeding one (1) year. By way of example and not limitation, this Section would apply to a contract with a pay-per-view television service operator providing in-room viewing access directly to each Hotel guest of movies, sporting events, or other televised entertainment in return for a specified usage charge that is collected by Operator and wholly or partially paid over to the pay-per-view television service operator. A



contract that is automatically renewed at the end of each one (1) year period absent cancellation by either party satisfies the term limitation stated in subpart (iii) hereof.

Owner and Operator may modify and/or update the preceding list of categories of contracts that, as of the Commencement Date, would constitute Excluded Contracts upon receipt of an Opinion of Bond Counsel.

3.8.5. Contracts requiring Owner's approval pursuant to Section 3.8.2 shall be approved or disapproved in the following manner. Operator shall submit a written request in the form of Exhibit G for approval to Owner and Bond Counsel with a copy of the proposed contract or agreement attached. Owner shall approve or disapprove the Contract within twenty (20) Business Days of receipt of Operator's submission (unless Owner and Operator mutually agree to extend that time period) by sending Operator a written notice of approval or disapproval. If Owner fails to approve or disapprove of the contract within the first twenty (20) Business Days (or mutually agreed extended period of time), Operator shall send a second request for approval to Operator and to Bond Counsel. If Owner fails to approve or disapprove of the contract within ten (10) Business Days of receipt of the second request for approval (or mutually agreed extended period of time), the Contract shall be deemed disapproved by Owner.

Operator and Owner agree that, as part of Owner's review of a proposed Contract, Owner shall determine whether the proposed Contract will be consistent with Revenue Procedure 97-13 and Article 21 and whether the proposed Contract will otherwise result in private business use of any portion of the Hotel for purposes of Section 141 of the Code and, if so, will be prohibited by the Code. In making its determination, Owner shall obtain an Opinion of Bond Counsel or satisfactory evidence to Owner that an Opinion of Bond Counsel is not required for such determination. Owner acknowledges that Operator may regard Owner's approval of a proposed contract as a determination that the proposed contract is consistent with Revenue Procedure 97-13 and will not otherwise result in impermissible private business use of any portion of the Hotel for purposes of Section 141 of the Code, and that Operator shall have no independent obligation to determine the affect of the proposed contract on the excludability from gross income for federal tax purposes of interest on the Bonds. If Owner determines that a proposed contract will result in private business use of a portion of the Hotel for purposes of Section 141 of the Code but that the amount of private use is permissible, Owner shall so advise Operator in its written approval of the contract.

If the Owner determines that entrance into the Contract would jeopardize the excludability from gross income for federal income tax purposes of interest on the Bonds, Owner's notice of disapproval shall so state. Owner may make such a determination even if the contemplated amount of private business use of the Hotel would not exceed the ten percent (10%) level permitted by Section 141 of the Code and Treas. Reg. § 1.1413 if Owner reasonably concludes that a cushion should be maintained between the existing and proposed level of private business use and the ten percent (10%) maximum.

3.8.6. Excluded Contracts shall be subject to approval of Owner in the following manner: Operator shall submit a written request in the form of Exhibit H for approval to Owner, indicating such Contract is an Excluded Contract along with a copy of such Contract. Owner shall approve or disapprove Contract within seven Business Days after receipt hereof by Owner. Owner shall not be required to obtain an Opinion of Bond Counsel prior to approval or

disapproval thereof. If Owner fails to approve or disapprove the Contract within seven Business Days of receipt of Operator's submission (unless Owner and Operator mutually agree to extend the time period), the Contract is deemed disapproved. In the event Owner determines the Contract may not qualify as an Excluded Contract, Owner may elect to follow the approval process of Section 3.8.5, and shall notify Operator of such election.

3.8.7. After execution of any Contract, Operator shall comply with any respective Opinion of Bond Counsel delivered to Operator related to such Contract and shall take all steps to ensure that the implementation of the Contract does not violate the terms of such Contract, the Opinion of Bond Counsel (if any), Section 21, the Lease or this Agreement.

### **SECTION 3.9 – COMPLIANCE WITH LEASE**

3.9.1. General. This Agreement is subject to all terms and conditions of the Lease. Operator shall manage and operate the Hotel in compliance with the Lease, and agrees to comply with the applicable provisions of the Lease related to its duties and obligations under this Agreement. Owner and Operator acknowledge compliance with the Lease is vital to the successful operation, management and maintenance of the Hotel. Owner certifies that attached to this Agreement as Exhibit E is an accurate and complete copy of the Lease as of the Commencement Date. Owner has also provided Operator copies of the following items, attached hereto as Exhibit F: (i) Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1 and (ii) Army Regulation 600-7. Operator acknowledges receipt and review of the foregoing and has become familiar with the applicable provisions of the Lease to effectively manage and operate the Hotel in accordance therewith.

3.9.2. Amendments to Lease. Owner agrees to promptly provide Operator with copies of all executed amendments or supplements to the Lease, including any amendments or updates to any laws or regulations referred in the Lease to which the Owner has received from the Secretary of the Army or agent thereof.

3.9.3. Reporting. Operator will comply with all applicable reporting requirements required by Owner under the Lease.

3.9.4. Conflicts. Any conflicts or differences between the terms of this Agreement and the Lease shall be resolved in accordance with the Lease, as the governing document.

### **SECTION 3.10 – OTHER ADDITIONAL DUTIES OF OPERATOR.**

3.10.1. Operator shall supervise and maintain complete books and records in compliance with Article IX hereof and in substantial accordance with GAAP in which there shall be properly recorded all receipts and disbursements in connection with the management and operation of the Hotel.

3.10.2. To the extent funds are available or are made available by Owner for such purpose pursuant to the terms of this Agreement, the Operator shall keep the Hotel and the Furniture, Fixtures and Equipment in good order, repair, and condition, including, without

limitation, making necessary, desirable, or appropriate replacements, improvements, additions, and substitutions to the end that the Hotel shall be maintained and adequately furnished.

3.10.3. Operator shall cooperate and consult with Owner on any plans and agreements for capital improvements to the Hotel, and shall, from time to time, make recommendations for future capital improvements that Operator deems in the best interest of Owner and consistent with the operational plans of the Hotel.

3.10.4. Operator shall supervise and purchase, in Owner's name, all Inventories, Fixed Asset Supplies, Furniture, Fixtures and Equipment, operating supplies and other consumables which, in the normal course of business in accordance with the Annual Operating Budget, the Pre-Opening Budget or Initial Operating Budget (as the case may be), are necessary, desirable, or appropriate to maintain and operate the Hotel, consistent with the Annual Operating Budget, the Pre-Opening Budget or Initial Operating Budget, or otherwise approved by Owner. The Operator shall comply with the applicable Procurement Policies pursuant to Section 3.6.3.

3.10.5. With prior consent of or at the direction of Owner, Operator shall take such action at law or in equity in the name of either Operator or Owner, which are deemed necessary, desirable, or appropriate in connection with routine matters, such as, but not limited to, dispossession proceedings for nonpayment of rent and proceedings for collection of other amounts due the Hotel for services rendered, arising out of the normal course of the operation of the Hotel. Owner shall have the right to join in all legal action or proceedings in which it is a named party or in which it either has a legal interest or would ultimately be responsible for payment of all or part of any damages claimed whether or not Owner has been named a party.

3.10.6. Operator shall not discriminate against any person or persons or exclude them from the Hotel or any programs or activities at the Hotel because of race, color, religion, sex, age, handicap, national origin, gender identity or sexual orientation. Operator will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

#### **ARTICLE FOUR ADVERTISING AND SALES PROMOTION**

Operator shall be responsible for all day-to-day decisions related to the marketing program for the Hotel, including, without limitation, all day-to-day decisions regarding advertising, rooms rates, group discounts, sales promotions, and the like; such decisions to be in accordance with the policies and procedures developed pursuant to Article III and the applicable budget. Operator shall develop and implement a program of marketing, sales and promotion (the "Marketing Program") for the Hotel, shall annually review and update the Marketing Program and shall submit the Marketing Program to the Owner for approval as part of the budgeting process. Operator shall use its best efforts to develop and implement the Marketing Program as it deems necessary, desirable, and prudent in accordance Hotel Standards and for the successful operation of the Hotel, such Marketing Program to include the development and delivery of a website for the Hotel.

All costs and expenses of the Marketing Program shall be detailed in the Annual Operating Budget, the Pre-Opening Budget or Initial Operating Budget (as the case may be), and shall be paid by the Owner in accordance with the applicable budget or as otherwise approved by the Owner.

## **ARTICLE FIVE EXPENSES REIMBURSED BY OWNER**

All reimbursable Operating Expenses pursuant to Article VIII, reimbursable Capital Expenditures pursuant to Article XVI and all other expenses and deductions relating to the operation of the Hotel shall be borne by Operator and reimbursed by Owner in accordance with the Annual Operating Budget, Pre-Opening Budget or Initial Operating Budget then in effect, or as otherwise approved by the Owner, except for services referred to in Article Six which, except as provided therein, shall be paid by the Operator without reimbursement.

The Executive Staff and Hotel Employees that directly report to the Executive Staff shall be reimbursed for all reasonable and customary expenses, including business, entertainment, relocation, and travel expenses associated with the operation of the Hotel in accordance with the Annual Operating Budget, the Pre-Opening Budget or Initial Operating Budget then in effect, or as otherwise approved by the Owner.

Because the General Manager may need to temporarily reside at the Hotel and be available on-site and full-time to properly perform the duties of his/her employment, he or she may receive, in addition to his or her Compensation, complimentary accommodations in a Guest Room in the Main Lodge for up to 45 days annually during the first year of employment and 30 days annually for all subsequent years of employment, an allowance for food and beverage as approved by Owner during such temporary residence and reimbursement for any expenses which may reasonably be incurred in performance of his or her duties during such temporary residence.

## **ARTICLE SIX EXPENSES TO BE BORNE BY OPERATOR**

**SECTION 6.1 – CORPORATE MANAGEMENT STAFF OF OPERATOR:** The supervisory services of Operator's Corporate Management Staff shall be provided by Operator at its own expense and not charged to Owner, including any travel and business expenses unless otherwise approved by Owner.

Operator may charge Owner reasonable transportation and lodging costs of Operator's Corporate Management Staff in furtherance of Owner's business (on a prorated bases when appropriate) and other out-of-pocket expenses including reimbursement for food and beverage at actual cost, up to an amount annually budgeted and approved by the Owner. Once the Hotel is open for business, Operator's Corporate Management Staff may reside and dine at the Hotel when at the Hotel on Owner's business, and such reasonable lodging and reasonable dining expenses shall be paid by Owner, but shall be accounted for by Operator on a monthly basis.

**SECTION 6.2 – HOSPITALITY CONSULTANT:** If Owner is required to employ a Hospitality Consultant pursuant to any provision of the Indenture or is so required by the Trustee (as defined in the Indenture), all costs, fees and expenses of employing such Hospitality

Consultant shall be paid by Operator and deducted from its Management Fee under Section 12.1 of this Agreement and not charged to Owner as an Operating Expense or otherwise.

## **ARTICLE SEVEN COMPLIANCE WITH LAWS**

**SECTION 7.1 – COMPLIANCE BY OPERATOR:** Operator, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the use of targeted small businesses as subcontractors or suppliers, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000); the Age Discrimination Act of 1975, as amended (42 U.S.C. §6102), 5500.11 and 1020.1 and Army Regulation 600-7. The Operator, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Agreement.

**SECTION 7.2 – SALES TAX:** Pursuant to Iowa Code section 423.2(10) (2007), by executing this Agreement, Operator certifies that it is either (a) registered with the Iowa Department of Revenue and collects and remits Iowa sales and use taxes as required by Iowa Code chapter 432; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). Operator also acknowledges that Owner may declare this Agreement void with respect to one or both of them if the above certification is false. Operator also understands that fraudulent certification may result in Owner or its representative filing for damages for breach of contract.

If Operator enters into any subcontracts for the Hotel, those subcontracts must include the following provisions:

“Pursuant to Iowa Code section 423.2(10) (2007), by executing this Subcontract the Subcontractor certifies it is either (a) registered with the Iowa Department of Revenue and collects and remits Iowa sales and use taxes as required by Iowa Code chapter 432; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Subcontractor also acknowledges that the Owner may declare the Contract void if the above certification is false. The Subcontractor also understands that fraudulent certification may result in the Owner or its representative filing for damages for breach of contract.”

### **SECTION 7.3 – ENVIRONMENTAL LAWS AND REGULATIONS.**

7.3.1. Operator shall use all reasonable means available to protect the environment and natural resources of the Hotel. Operator agrees to institute operating procedures and practices for the Hotel to operate the Hotel in an environmentally responsible manner and in a manner sensitive to the natural features of the Honey Creek Resort State Park, and to the end shall use native plant species wherever possible in the landscaping, yard markers and the like, shall utilize integrated pest management practices and shall minimize the use of fertilizers and chemicals. Operator shall promptly comply with all provisions of the Lease, and all federal, state and local environmental laws, regulations, conditions or instructions.

7.3.2. Owner shall establish as needed, and Operator shall comply with, operating practices and procedures, as developed and deemed necessary by the Owner to ensure compliance with all local, state and federal laws and regulations governing Threatened Species and Endangered Species and protection of wetlands, including but not limited to Iowa Code Chapter 481B (2007) as amended from time to time and 571 Iowa Administrative Rule Ch. 77., to specifically address the conservation and protection of Threatened Species and Endangered Species at the Hotel. Owner and Operator acknowledge that Threatened Species and Endangered Species may be present on the Hotel premises and at the Honey Creek Resort State Park.

7.3.3. Pursuant to this Agreement and the Lease, Operator shall prohibit the disposal of any toxic or hazardous materials on the Hotel premises. Operator shall require all sanitation facilities on boats owned by the Hotel and moored at the Hotel facilities be sealed against any discharge into Lake Rathbun, and Operator shall require all agreements to moor private boats at the Hotel contain provisions requiring that any sanitation facilities on such boats be sealed against any discharge into Lake Rathbun. Operator shall not discharge waste or effluent from the Hotel premises in such a manner that the discharge will contaminate streams, Lake Rathbun or other bodies of water or otherwise become a public nuisance. Operator shall promptly report any violations of this subsection to Owner.

7.3.4. Owner is committed to obtaining and sustaining a Certified Rating or Silver Rating under the LEED-NC Green Building Rating System for New Construction & Major Renovations Version 2.2 ("LEED-NC") for the Main Lodge Facility. In the event Owner applies for a Certified Rating or Silver Rating from LEED-NC, Operator shall cooperate fully with Owner throughout the application process for such rating. Regardless of whether the rating is obtained, Operator shall establish as needed, in consultation with and with final approval by Owner, and Operator shall comply with, the operating practices and procedures, to obtain and sustain such rating for the Main Lodge Facility.

7.3.5. Owner is committed to obtaining and sustaining Audubon Cooperative Sanctuary Certification ("Audubon Certification") for the golf course and related outdoor facilities. In the event Owner applies for Audubon Certification, Operator shall cooperate fully with Owner throughout the application process for such designation. Regardless of whether the rating is obtained, Operator shall establish as needed, in consultation with and with final approval by Owner, and Operator shall comply with, the operating practices and procedures, to obtain and sustain Audubon Certification for the golf course and related outdoor facilities.

7.3.6. Pursuant to this Section 7.3 and Sections 3.1, and 3.6.1, Operator shall establish environmental and ground maintenance operating procedures and practices in consultation with and with final approval by Owner. Such operating procedures and practices shall include (1) staff training requirements, (2) notification procedures to Owner of any violations of said procedures and practices and (3) procedures for consultation with Owner on implementation or interpretation of said procedures and practices. Operator agrees and acknowledges that it will immediately notify and consult with the Owner in those situations in which immediate or irreparable harm to the environment may occur.

## **ARTICLE EIGHT FUNDS; DISBURSEMENT OF FUNDS**

### **SECTION 8.1 – REVENUE AND OPERATIONS FUND OF THE BOND FUND:**

All monies received by Operator and the Owner in the operation of the Hotel, including, without limitation, all Gross Sales, shall be deposited in connection with the Revenue and Operations Fund of the Bond Fund, pursuant to the Indenture.

### **SECTION 8.2 – PAYMENT OF OPERATING EXPENSES:**

8.2.1. Operator shall pay all Operating Expenses as such Operating expenses become due and owing. Operator may seek reimbursement from Owner from amounts on deposit in the Revenue and Operations Fund for all allowable Operating Expenses paid by Operator that are in accordance with the Initial Operating Budget or Annual Operating Budget, as the case may be, by submitting a written request to Owner together with supporting documentation in the form attached hereto as Exhibit C or as otherwise approved by Owner (the "Reimbursement Request"). Owner will reimburse Operator for all allowable Operating Expenses on a bimonthly basis as follows: (1) for all Reimbursement Requests received by Owner on or before the 15<sup>th</sup> calendar day of the month (or if such day is not a Business Day, the immediately preceding Business Day) (the "First Reimbursement Date"), Owner shall reimburse Operator from amounts on deposit in the Revenue and Operations Fund within ten Business Days of such First Reimbursement Date; and (2) for all Reimbursement Requests received by Owner on or before the last Business Day of the month (the "Second Reimbursement Date"), Owner shall reimburse Operator from amounts on deposit in the Revenue and Operations Fund within ten Business Days of such Second Reimbursement Date.

8.2.2. Operator shall promptly and without delay inform Owner of any current or projected deviations from the Initial Operating Budget or Annual Operating Budget then in effect and the reasons for such deficiencies and/or deviations. During a calendar month, in the event Operating Expenses (the "Unbudgeted Operating Expenses") in excess of the current monthly budget will be or are incurred by Operator, Operator shall provide a written explanation for the deviation and submit a written request to Owner to approve such Unbudgeted Operating Expenses. Owner shall have five Business Days after receipt of the written request to either approve or disapprove the request.

8.2.3. Operator shall provide a bi-monthly accounting of all Operating Expenses, including all Unbudgeted Operating Expenses, on the first and fifteenth day of each month accounting for the prior two week period.

## **ARTICLE NINE BOOKS AND RECORDS; AUDITS**

**SECTION 9.1 – GENERAL.** Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all in accordance with GAAP, throughout the term of this Agreement. The books of account and all other records relating to or reflecting the operation of the Hotel shall be available to Owner and its representatives, the Authority, the Auditor of the State of Iowa and his representatives and the Department of the Army or agent thereof at all reasonable times for examination, audit,

inspection, and transcription. All books of account and other financial books and records pertaining to the Hotel shall be the property of Owner and either made available or kept on-site at the Hotel; provided, however, that personnel records pertaining solely to Hotel Employees shall be Operator's property.

**SECTION 9.2 – MONTHLY REPORTS.** Operator shall provide to Owner an operating statement reflecting actual revenues and expenses for each month or partial month during which Operator manages the Hotel, and a balance sheet. Such statements shall be provided no later than the last day of the following month.

**SECTION 9.3 – ANNUAL AUDITS.** Operator shall fully and timely cooperate with Owner and any auditors or accountants regarding the preparation of yearly audited financial statements, the completion and compliance with reporting and audit requirements set forth in Section 7.14 of the Indenture and any other audits or requests for financial information for the Hotel.

**SECTION 9.4 – TERMINATION.** Upon any termination of this Agreement, all of such books and records that are the property of the Owner pursuant to this Article shall be turned over to Owner at the Hotel within ten (10) days of the termination date, and Owner shall accept the books and records and assume complete responsibility therefor so as to insure the orderly continuance of the operation of the Hotel.

**SECTION 9.5 – TAX RETURNS.** Owner and Operator shall be solely responsible for preparing and filing their respective income tax returns.

## **ARTICLE TEN RESERVED**

## **ARTICLE ELEVEN INSURANCE**

**SECTION 11.1 – INSURANCE REQUIREMENTS:** Operator shall maintain in effect, with insurance companies of recognized responsibility and duly authorized to transact business in the State of Iowa, insurance covering its services, employees and work of the type and in the amounts set forth in Exhibit A to this Agreement. The insurance shall, among other things, insure against any covered loss or damage resulting from Operator's performance of this Agreement. Operator will maintain any additional insurance not included in Exhibit A that is considered prudent for the commercial operations of the Hotel, consistent with the hotel and resort industry and Section 16 of the Lease, and shall amend Exhibit A to this Agreement with such additional insurance coverage throughout the term of this Agreement. Operator shall name Owner as an additional insured under each insurance policy. As required by Section 16 of the Lease, Operator shall provide copies of the insurance policies and any updates or amendments thereto to the District Engineer of the U.S. Army Corps of Engineers, (the "District Engineer"), or if acceptable to the District Engineer, copies of the certificates of insurance. The insurance



policies shall provide that the District Engineer and Owner be given thirty days notice of cancellation or change in such insurance. Premiums and other costs of insurance required herein shall constitute an Operating Expense.

**SECTION 11.2 – CERTIFICATES OF COVERAGE:** All insurance policies required by this Agreement shall remain in full force and effect during the entire term of this Agreement and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of Owner. Operator shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Agreement, to Owner upon execution of this Agreement and as any insurance policies are updated or changed, and as provided in Section 11.1. The certificates shall be subject to approval by Owner. The insurer shall state in the certificate that no cancellation or change in the insurance will be made without at least thirty (30) days' prior written notice to Owner and District Engineer. Approval of the insurance certificates by Owner shall not relieve Operator of any obligation under this Agreement.

**SECTION 11.3 – CLAIMS PROVISION:** All insurance policies required by this Agreement shall provide coverage for all covered claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

**SECTION 11.4 – NO LIMITATION OF LIABILITY:** Acceptance of the insurance certificates by Owner shall not act to relieve Operator of any obligation under this Agreement.

**SECTION 11.5 – INSURANCE BY OWNER:** Pursuant to Iowa Code chapter 669, Owner and the State of Iowa are self-insured against all risks and hazards relating to this Agreement. No separate fund has been established to provide self-insurance, and Owner and the State of Iowa are not obligated to establish any such fund during the term of this Agreement.

## **ARTICLE TWELVE MANAGEMENT FEE AND PRE-OPENING COMPENSATION**

**SECTION 12.1 – MANAGEMENT FEE:** Commencing on and after the Scheduled Opening Date, during each Fiscal Year, Owner shall pay Operator a Management Fee equal to (i) the Fixed Portion plus, for all Fiscal Years after 2010, (ii) 1% of Income Before Management Fees and Fixed Expenses for such Fiscal Year (the "Variable Portion") up to an amount equal to the Fixed Portion provided however, that in no event shall the Management Fee exceed an amount equal to two times the Fixed Portion for such Fiscal Year.

"Fixed Portion" means the following amounts for the following Fiscal Years:

<u>Fiscal Year (ending June 30)</u>	<u>Fixed Portion</u>
August 1, 2008 to June 30, 2009 (Partial Fiscal Year)	\$ 168,300
2010	222,048
2011	221,829
2012	207,036
2013	217,987

Operator shall submit monthly invoices to Owner or its designee, and Owner or its designee shall pay 1/12 of the Fixed Portion of the Management Fee by the fifteenth (15th) day of the next succeeding month (ie, the monthly Fixed Portion for January shall be paid by February 15). At the end of each Fiscal Year (within 30 days after the completion of the audited financial statements for such Fiscal Year), Operator shall be paid the total unpaid portion of the Management Fee. Proportional adjustments shall be made to the Management Fee for any period beginning on the first day of a Fiscal Year and ending on the date of termination of this Agreement, if such termination occurs prior to the last day of such Fiscal Year, each proportional adjustment to be made on the basis of the number of days in such period.

**SECTION 12.2 – PRE-OPENING COMPENSATION:** Owner shall pay Operator for pre-opening consultations, compensation to employees, marketing, sales promotions, and other pre-opening services performed pursuant to Section 3.2 in accordance with the Pre-Opening Budget in accordance with the following schedule:

<u>Calendar Month</u>	<u>Amount</u>
January 2008	\$15,000
February 2008	15,000
March 2008	12,000
April 2008	12,000
May 2008	12,000
June 2008	15,000
July 2008	15,000

And for each additional calendar month therefore before the Scheduled Opening Day, \$15,000 per calendar month, pro-rated for partial calendar months.

Owner shall compensate Operator for managing the specification, purchasing, delivery and installation of the Furniture, Fixtures and Equipment for the Hotel up to 90 days after the Scheduled Opening Day, in an amount approved by Owner in the Pre-Opening Budget.

Operator shall submit to Owner or its designee for payment invoices or other evidence of payment of the pre-opening expenses and Owner or designee shall use its best efforts to pay approved expenses within 15 Business Days following submission of the invoice or other evidence of payment. All prior agreements between Owner and Operator for payment of interim pre-opening compensation shall terminate as of the Commencement Date.

## **ARTICLE THIRTEEN**

### **OPERATOR'S TRADE NAMES, TRADEMARKS, AND SYSTEMS**

**SECTION 13.1 – OPERATOR'S RIGHTS:** All Trade Names and Systems are exclusively the property of Operator. No provision of this Agreement and no right or remedy of Owner hereunder shall confer upon Owner, or any transferee, assignee, or successor of Owner, or any person, firm, or corporation claiming by or through Owner, the right to use, rent, lease, license, transfer, reproduce, network, display, or distribute the Trade Names or the Systems or use the Trade Names in the use and operation of the Hotel, and Owner shall have no right to use such Systems or Trade Names. Operator shall be entitled to enforce its rights under this

paragraph by actions for damages or relief by injunction and by the pursuit of any other right or remedy available to Operator at law or equity. This Section shall survive termination of this Agreement.

**SECTION 13.2 – USE OF NAME:** Operator shall have the right, but not the obligation, to identify itself as manager of the Hotel on any and all advertisements and other marketing materials used in connection with the Hotel, and to post such signs in the lobby or other exterior or interior locations of the Hotel as it may desire to so identify itself at its own expense and not as an Operating Expense. Operator shall not use its Trade Name or otherwise identify itself as the manager of the Hotel on any inventories, Fixed Asset Supplies, Furniture, Fixtures and Equipment, signage, written materials or advertisements, paid by or reimbursed by the Owner for the Hotel, unless otherwise approved by the Owner.

## **ARTICLE FOURTEEN TERM OF AGREEMENT AND TERMINATION**

**SECTION 14.1 – TERM:** This Agreement shall commence upon the Commencement Date and shall continue for a period ending June 30, 2013 (the “Initial Term”), unless sooner terminated in accordance with this Agreement. Upon expiration of the Initial Term, this Agreement shall automatically renew for each Fiscal Year (each a “Renewal Term”) thereafter, unless either party gives notice to the other party at least 120 days prior to the commencement of the next Renewal Term or the Owner determines, in its sole discretion, that this Agreement is subject to competitive bidding requirements under Iowa law and is not subject to renewal.

### **SECTION 14.2 – TERMINATION:**

14.2.1. Termination for Convenience by Owner. Following sixty (60) days notice to Operator, Owner may terminate this Agreement for convenience, with or without cause and without payment of any penalty or incurring any further obligation to Operator, including any lost profits, unearned fees or similar claims. In the event of termination pursuant to this subsection, Owner shall pay to Operator all Management Fees due Operator to the date of termination and such other sums as to which Operator shall be entitled under Article Eighteen hereof.

14.2.2. Termination for Cause by Owner. The occurrence of any one or more of the following events shall constitute cause for Owner to declare Operator in default of its obligations under this Agreement.

14.2.2.1 Operator fails to observe or perform, to Owner’s satisfaction, any covenant, condition or obligation created by this Agreement;

14.2.2.2 Operator becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; Operator terminates or suspends its business; or Owner reasonably believes that Operator has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

14.2.2.3 Operator has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement; or

14.2.2.4 Operator has engaged in conduct that has or may expose Owner to liability, as determined in the Owner's sole discretion.

14.2.2.5 Operator has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

14.2.3. Notice of Default. If there is a default event caused by Operator, Owner shall provide written notice to Operator requesting that the breach or noncompliance be remedied within the period of time specified in Owner's written notice to Operator. If the breach or noncompliance is not remedied by the date of the written notice, Owner may either:

14.2.3.1 Immediately terminate this Agreement without additional written notice; or,

14.2.3.2 Enforce the terms and conditions of this Agreement and seek any legal or equitable remedies.

In either event, Owner may seek damages as a result of the breach or failure to comply with the terms of this Agreement.

14.2.4. Termination Due to Lack of Funds, Change in Law by Owner or Termination of Lease. Owner shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to Operator as a result of any of the following:

14.2.4.1 Adequate funds are not appropriated or granted to allow Owner to operate as required and to fulfill its obligations under this Agreement, including adequate funds to construct and complete the Hotel;

14.2.4.2 Funds are de-appropriated or not allocated or if funds needed by Owner, at Owner's sole discretion, are insufficient for any reason;

14.2.4.3 Owner's authorization to operate is withdrawn or there is a material alteration in the programs administered by Owner;

14.2.4.4 Owner's duties are substantially modified.

14.2.4.5 The Lease is terminated or cancelled.

In the event of termination of this Agreement pursuant to this subsection, the exclusive, sole and complete remedy of Operator shall be payment for services completed prior to termination, including all Management Fees due Operator to the date of termination and such other sums as to which Operator shall be entitled under Article Eighteen hereof.

14.2.5. Termination for Cause by Operator. The occurrence of or any one or more of the following events shall constitute cause for Operator to declare Owner in default of its obligations under this Agreement:

14.2.5.1 Owner fails to observe or perform any covenant, condition or obligation created by this Agreement;

14.2.5.2 Owner has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement; or

14.2.5.3 Owner has engaged in conduct that has or may expose Operator to liability, as determined in the Operator's sole discretion.

14.2.5.4 Owner has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

14.2.6. Termination by Operator Due to Sale of Hotel. Operator shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to Owner as a result of the sale of the Hotel by Owner to a Person, other than a governmental unit, agency or department of the State of Iowa, evidenced by a fully executed purchase agreement. In the event of termination of this Agreement pursuant to this subsection, the exclusive, sole and complete remedy of Operator shall be payment for services completed prior to termination, including all Management Fees due Operator to the date of termination and such other sums as to which Operator shall be entitled under Article Eighteen hereof.

14.2.7. Notice of Default. If there is a default event caused by Owner, Operator shall provide written notice to Owner requesting that the breach or noncompliance be remedied within the period of time specified in Operator's written notice to Owner. If the breach or noncompliance is not remedied by the date of the written notice, Operator may either:

14.2.7.1 Immediately terminate this Agreement without additional written notice; or,

14.2.7.2 Enforce the terms and conditions of this Agreement and seek any legal or equitable remedies.

In either event, Operator may seek damages as a result of the breach or failure to comply with the terms of this Agreement.

#### **SECTION 14.3 – ACTIONS TO BE TAKEN UPON TERMINATION:**

Upon a Termination, the following shall be applicable:

14.3.1. Operator shall, within sixty (60) days after Termination, prepare and deliver to Owner a final accounting statement with respect to the Hotel, along with a statement of any sums due from Owner to Operator pursuant hereto, dated as of the date of Termination. Within sixty (60) days of the receipt by Owner of such final accounting statement, the parties will make whatever cash adjustments are necessary pursuant to such final statement. The cost of

preparing such final accounting statement shall be considered an Operating Expense, unless the Termination occurs as a result of a default by either party pursuant to Sections 14.2.2 or 14.2.5, in which case the defaulting party shall pay such cost. Operator and Owner acknowledge that there may be certain adjustments for which the information will not be available at the time of the final accounting and the parties agree to readjust such amounts and make the necessary cash adjustments when such information becomes available; provided, however, that all accounts shall be deemed final as of the first (1st) anniversary of the effective date of Termination.

14.3.2. On or before the date of Termination, Operator shall release and transfer to Owner any of Owner's funds which are held or controlled by Operator with respect to the Hotel.

14.3.3. On or before the date of Termination, Operator shall make immediately available to Owner such books and records respecting the Hotel (including those from prior years, subject to Operator's reasonable records retention policies) required pursuant to Article Nine and all Guest Records. Additionally, on the date of Termination, Operator shall immediately provide such additional information to Owner (other than Operator's proprietary information) that is normal and customary upon a Termination and is necessary to ensure the orderly continuance of the operation of the Hotel.

14.3.4. On or before the date of Termination, Operator shall (to the extent permitted by law) assign to Owner or to the new Operator all operating licenses and permits for the Hotel which have been issued in Operator's name, including liquor and restaurant licenses, if any, provided that if Operator has expended any of its own funds in the acquisition of any of such licenses or permits, Owner shall reimburse Operator therefor if it has not done so already.

14.3.5. Operator shall purchase, at their then fair market value, any items of the Hotel's inventories and fixed asset supplies as may be marked with any Operator's Trademarks or Trade Names but that do not also bear the name of the Hotel or contain any reference to the Owner. Upon Termination, all use of or right to use the Operator Trademarks or Trade Names at or in connection with the Hotel shall cease forthwith, and Owner shall (i) within fifteen (15) days of the date of such Termination, place coverings over any signs or similar identification which contain any of the Operator Trademarks or Trade Name, or shall otherwise remove or render such signs or other similar identification not visible to the public; (ii) remove any such signs or similar identification from the Hotel by no later than thirty (30) days after the date of Termination; and (iii) within thirty (30) days as of the date of such Termination, remove from the Hotel all fixed asset supplies, inventories and other items bearing any Operator Trademark or Trade Name or remove all Operator Trademarks from such items. If Owner has not removed such signs or other items bearing Operator Trademarks or Trade Name within thirty (30) days after Termination, Operator shall have the right to do so at Owner's expense. However, if the Termination is pursuant to Section 14.2.2, Operator shall be responsible for the removal from the Hotel of the signs or other items bearing Operator Trademarks and Trade Name and shall bear the cost of doing so.

14.3.6. All Systems used at the Hotel which are owned by Operator or the licensor of any of them are proprietary to such Operator or the licensor of any of them, and shall in all events remain the exclusive property of such Operator or the licensor of any of them, as the case may be, and nothing contained in this Agreement shall confer on Owner the right to use any of

such Systems. Operator shall have the right to remove from the Hotel without compensation to Owner any such Systems (including upgrades and replacements).

Notwithstanding the foregoing, provided that Owner and any successor operator execute a license agreement with Operator or Operator's then-current license agreement, for one hundred and twenty (120) days following the Termination, Operator shall, subject to rights and obligations under its license agreement or any third-party license agreements, provide a limited, non-transferable, non-exclusive license to use, on an "as is" basis with no warranties of any kind, those items of the Systems located at the Hotel that consist of the components of the property management system (to be mutually identified) that are directly necessary for the ongoing operation of the Hotel (such as checking guests in and out and preparing guest folios and reservations). Such use shall be for the sole purpose of allowing an orderly transition of Hotel management to a new operator.

14.3.7. Owner shall cause the entity which shall succeed Operator as the operator of the Hotel to hire a sufficient number of the employees at the Hotel to avoid the occurrence, in connection with such Termination, of a "closing" under the WARN Act.

14.3.8. Operator shall peacefully vacate and surrender the Hotel to Owner and shall not waste, damage or destroy any of Owner's Property.

14.3.9. The provisions of this Section 14.3 shall survive Termination.

## **ARTICLE FIFTEEN**

### **REPAIRS, MAINTENANCE, CAPITAL IMPROVEMENTS, AND RENOVATIONS**

**SECTION 15.1 – REPAIRS, MAINTENANCE, AND CAPITAL IMPROVEMENTS:** Operator is authorized, from time to time during any Fiscal Year, to reasonably expend funds and to seek reimbursement for such expenditures pursuant to Article VIII hereof, which in Operator's opinion are necessary, desirable, and appropriate for regular and emergency repairs and maintenance, and are in accordance with the Annual Operating Budget or Initial Operating Budget then in effect.

Operator is authorized, from time to time during any Fiscal Year, to request from the Owner or its designee funds to pay Capital Expenditures in accordance with the Annual Operating Budget or Initial Operating Budget then in effect.

**SECTION 15.2 – RENOVATIONS:** At any time during the term of this Agreement Owner shall have the sole discretion to renovate, rehabilitate, expand, or otherwise alter or modify the Hotel.

## **ARTICLE SIXTEEN**

### **NOTICES**

Any notice, statement, or demand required or permitted to be given under this Agreement shall be in writing and delivered to the representative of the party to receive notice at the address of such representative as it appears below or other such representative and address as designated by Owner or Operator in writing. The effective date for any notice hereunder shall be the date of delivery of such notice (not the date of mailing) which may be effected by hand-delivery,

certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS.

If to Owner:

Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Attention: Director  
Tel: (515) 281-5385  
Fax: (515) 281-6629

If to Operator:

Central Group Management, LLC  
215 Park Avenue South, Suite 200  
St. Cloud, Minnesota 56301  
Attention: Robert Pace  
Tel: (320) 654-6307  
Fax: (320) 654-1291

## **ARTICLE SEVENTEEN PUBLIC RECORDS**

The records, documents, electronic records and other information relating to the Hotel ("Hotel Records") may be determined to be "Public Records" as defined by Iowa Code chapter 22 (2007) ("the "Open Records Law"), subject to examination by a member of the public pursuant to the Open Records Law. Operator understands and acknowledges Owner may be required treat all records, documents and other information as Public Records. In the event Operator receives a request from the public to examine or copy Hotel Records, Operator shall comply with the Public Records Policy developed by Owner.

## **ARTICLE EIGHTEEN ASSIGNMENT OR TRANSFER BY OR CHANGE IN OWNER**

**SECTION 18.1 – ASSIGNMENT BY OPERATOR:** Operator shall not assign any or all of its right, title, and interest in this Agreement without the prior consent of Owner.

**SECTION 18.2 – ASSIGNMENT OR TRANSFER BY OWNER:** Owner may sell, lease, or otherwise transfer or assign, during the term of this Agreement, the Hotel or any interest of Owner therein without the prior consent of Operator, but Owner shall give Operator notice of any such action at least thirty (30) days prior to the taking thereof.

**SECTION 18.3 – TRANSFER COSTS:** In the event of a sale, lease, or other assignment or transfer of the Hotel to any person, firm, or corporation or public entity, Owner or the assignee or transferee shall pay or reimburse Operator for any and all reasonable and necessary costs associated with requests by Owner or assignee or transferee of Operator to make any computer, bookkeeping, accounting, tax, or other changes, entries, transfers, prorations, adjustments, or calculations in connection therewith regardless of whether (A) Operator is requested to continue to manage the Hotel, whether by an assignment or continuation of this



Agreement or by execution of a new management agreement; or (B) Operator's management is terminated.

## **ARTICLE NINETEEN INDEMNIFICATION AND LIMITATION OF LIABILITY**

**SECTION 19.1 – LIMITATION OF LIABILITY:** Operator expressly acknowledges that the Hotel and the authority and power of Owner is subject to legislative change by either the federal or state government. Should either governmental body enact measures which alter the Hotel or the authority and power of Owner, Operator shall not hold Owner liable in any manner for the resulting changes. Owner shall use best efforts to provide thirty (30) days' written notice to Operator of any such legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to this Agreement to address the legislative change. Nothing in this Section 19.1 shall affect or impair Owner's right to terminate this Agreement pursuant to the termination provisions in Section 14.2.

### **SECTION 19.2 – INDEMNIFICATION:**

19.2.1. By Operator. Operator agrees to defend, indemnify and hold harmless the State of Iowa, Owner and their officers, employees and agents appointed and elected and volunteers ("Owner Indemnified Persons") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or Owner ("Operator Related Damages"), related to or arising from:

19.2.1.1 Any material violation of this Agreement; or

19.2.1.2 Any negligent, grossly intentional, wrongful, bad faith or fraudulent act or omission of Operator or any agent or subcontractor utilized or employed by Operator; or

19.2.1.3 Operator's performance or attempted performance of this Agreement that constitutes a breach of the applicable standard of care, including any agent or subcontractor utilized or employed by Operator; or

19.2.1.4 Any failure by Operator to comply with the with applicable local, state and federal laws and regulations; or

19.2.1.5 Any failure by Operator to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by Operator to conduct business in the State of Iowa;

19.2.1.6 Any infringement by Operator of any copyright, trademark, patent, trade dress, or other intellectual property right; or

19.2.2. By Owner. Owner shall, only to the extent consistent with and permitted by Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify

Operator from and against any claim, as defined in Iowa Code Section 669.2, caused directly by the negligent or wrongful acts or omissions of any employee of the State of Iowa or Owner while acting within the scope of the employee's office or employment in connection with the performance of this Agreement. Operator agrees that any claim for which indemnification is sought pursuant to this Section will be subject to the provisions of Iowa Code Chapter 669 and 543 Iowa Admin. Code 1, including, without limitation, those provisions which address the making and filing of claims.

If the State of Iowa or Owner makes any indemnity payments to Operator pursuant to this Section and Operator thereafter collects or recovers all or a portion of such amounts from any person or third party, including from any insurance carrier, Operator shall promptly repay such collected or recovered amounts to the State of Iowa or Owner.

**SECTION 19.3 – PERSONAL GUARANTEES:** Contemporaneously with the execution and delivery of this Agreement on the Commencement Date, Robert Pace and Jean Pace shall deliver, in a form approved by Owner and attached hereto as Exhibit K, personal guarantees which shall absolutely and unconditionally guarantee to Owner the prompt payment of any and all present and future debts, liabilities and obligations owed by Operator under this Agreement, including all indemnification obligations of Operator, and absolutely and unconditionally guarantee to Operator the full and timely performance by Operator of all of its obligations under this Agreement.

**SECTION 19.4 – SURVIVAL:** Indemnification obligations of Owner and Operator shall survive termination of this Agreement.

## **ARTICLE TWENTY CLAIMS; MEDIATION**

Any claim or dispute arising out of or related to this Agreement may be submitted to voluntary mediation upon agreement of the parties. All proceedings, whether mediation or litigation, must take place in Iowa State Court and in Polk County, Iowa.

## **ARTICLE TWENTY-ONE QUALIFIED MANAGEMENT AGREEMENT**

### **SECTION 21.1 – QUALIFIED MANAGEMENT AGREEMENT:**

21.1.1. Compliance with Revenue Procedure 97-13. Notwithstanding anything contained herein to the contrary, including, without limitation, the fact that this requirement is not explicitly referenced in every instance where it is applicable, this Agreement is intended to comply in all respects with, and shall be interpreted in a manner consistent with, the provisions of Revenue Procedure 97-13, as a "qualified management agreement." Operator represents to Owner that Operator has reviewed and is familiar with the applicable requirements of Section 141 of the Code and Revenue Procedure 97-13. Any provisions of this Agreement shall be void and unenforceable if it is subsequently and reasonably determined by Owner, in the manner provided in Section 21.1.4, that compliance with such provision may be inconsistent

with Revenue Procedure 97-13 (including due to Changes in Tax Law). Accordingly, in the event of such a determination by Owner, Owner shall be deemed to have waived any breach of the provisions of this Agreement in question arising from Operator's non-compliance with such provision and, in no event, shall Operator be considered to be in breach thereof.

21.1.2. Specific Restrictions Imposed by Revenue Procedure 97-13.

21.1.2.1 Operator may not be paid any compensation that is, in whole or in part, based on a share of the net profits from the operation of the Hotel or any component thereof. Operator may not obtain reimbursement from Owner for any compensation paid to Operator's employees if such compensation is based, in whole or in part, on a share of the net profits from the operation of the Hotel as a whole or any component thereof. This Section 21.1.2, however, does not prohibit Operator from utilizing either the bonus pool based upon performance established pursuant to Section 3.4.6 or funds received by Operator in the form of the Management Fee to pay employee bonuses based, in whole or in part, on the net profits from the operation of the Hotel.

21.1.2.2 Operator may only obtain reimbursement from Owner for any bonuses paid to members of the Executive Staff as to any Fiscal Year in the manner provided by Section 3.4.6.

21.1.3. Inconsistency. The preceding Section 21.1.1 notwithstanding, This Agreement may contain one or more provisions inconsistent with Revenue Procedure 97-13 if Owner receives an Opinion of Bond Counsel and such provisions shall thereafter be treated as if consistent with Revenue Procedure 97-13 for purposes hereof. Any reasonable costs incurred by Owner to obtain such an opinion shall be an Operating Expense.

21.1.4. Consequences of Void Provision.

21.1.4.1 In the event Operator determines that a provision rendered void by Section 21.1.1 was material to its purposes for entering into this Agreement, Operator and Owner shall, in good faith, negotiate a replacement provision, the inclusion of which is consistent with Revenue Procedure 97-13 (including, if other replacement provisions do not satisfy Revenue Procedure 93-17, a provision under which the relevant compensation is a periodic fixed fee). If Operator and Owner are unable to negotiate a replacement provision as described in the preceding sentence, Owner or Operator may terminate this Agreement upon thirty (30) days notice or refer the matter for resolution in accordance with Section 20.1 (which resolution shall be subject to an Opinion of Bond Counsel).

21.1.4.2 The determination that a proposed replacement provision agreed to by Owner and Operator pursuant to Section 21.1.4.1 does not result in private business use shall be based upon an Opinion of Bond Counsel.

21.1.5. An election by Operator to terminate this Agreement pursuant to this Section 21.1.4 shall not constitute an Event of Default. Notwithstanding any other provision of this Agreement, such an election by Operator shall not give rise to any liability on Operator's part for any damages or other form of compensation to Owner or any other Person.

21.1.6. Opinion of Bond Counsel. Any determination by Owner that the inclusion of a particular provision in this Agreement may result in private business use shall be accompanied by an Opinion of Bond Counsel supporting such determination. Any costs incurred by Owner to reach such a determination, including but not limited to the costs of obtaining the Opinion of Bond Counsel, shall be an Operating Expense.

**SECTION 21.2 – RESERVATION SYSTEM; CHAIN SERVICES:** Owner shall determine the reservation system, chain services or franchise services, if any, to be used for the Hotel from time to time, and Operator shall fully cooperate and consult with Owner in making such determinations. Prior to executing any contracts for such services, Owner shall obtain an Opinion of Bond Counsel or determine that no such opinion is required.

## **ARTICLE TWENTY-TWO MISCELLANEOUS PROVISIONS**

**SECTION 22.1 – REPRESENTATION AND WARRANTY OF OWNER:** Owner hereby represents and warrants that as of the Commencement Date:

(i) Owner holds fee simple title to the Hotel except Owner holds a lease-hold interest in the real property portion of the Hotel;

(ii) The development and proposed use of the Hotel and the provision of facilities and services in connection therewith is in compliance with Section 29(b) of the Lease and the Development Plan (as defined in the Lease) and such plan has been approved by the District Engineer (as defined in the Lease);

(iii) Owner's approval of the Annual Operating Budget will constitute a representation by Owner that (a) all rates and charges for use of the Hotel are in compliance with Sections 9 and 11 of the Lease and (b) the proposed use of the Hotel is consistent with Sections 23 and 24 of the Lease;

(iv) Owner represents that Article 11 complies with the requirements of Section 16 of the Lease; and

(v) Owner represents that the proposed operation of the Hotel is consistent with the requirements of Section 23 of the Lease; and

(vi) Owner retains the obligations under the Lease to comply with the conditions of Section 36 thereof, and the Hotel, as proposed, will not disturb or alter any of the areas described in such Section without the approval of the District Engineer, but Operator has continued obligation to not disturb the areas set forth in such Section and to comply with Sections 7.3.1 and 7.3.2 hereof.

**SECTION 22.2 – NO PARTNERSHIP OR JOINT VENTURE:** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between Owner and Operator.

**SECTION 22.3 – INCORPORATION OF DOCUMENTS:** The RFP, and amendments and written responses to bidders' questions (collectively RFP) and Operator's

proposal submitted in response to the RFP as related to the management of the Hotel and all budgets related thereto (the "Operator's Proposal") are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and the Operator's Proposal unless this Agreement specifically directs otherwise. In the case of any inconsistency or conflict between the specific provisions of this Agreement, the RFP or Operator's Proposal, this Agreement shall govern.

**SECTION 22.4 – SUCCESSORS AND ASSIGNS BOUND:** This Agreement shall be binding upon and inure to the benefit of Owner and Operator and their permitted successors and assigns.

**SECTION 22.5 – ADDITIONAL DOCUMENTS:** Each party shall execute, acknowledge, or verify and deliver any and all documents necessary from time to time to carry out the purposes and intent of this Agreement.

**SECTION 22.6 – GOVERNING LAW:** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event that any proceeding of quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County, Iowa. This provision shall not be construed as waiving any immunity to suit or liability, including, without limitation, sovereign immunity in State or Federal court.

**SECTION 22.7 – SEVERABILITY:** It is the intention of the parties to comply fully with the Act, and all laws and public policies, and this Agreement shall be construed consistently with the Act, and such laws and public policies to the extent possible. To the extent that any court of competent jurisdiction is unable to so construe any provision of this Agreement and holds such provision or any part thereof to be invalid, such holding shall in no way affect the validity of the remainder of this Agreement.

**SECTION 22.8 – COMPLETE AGREEMENT:** This Agreement contains the entire agreement between the parties and supersedes any prior negotiations, representations, understandings, or agreements among them respecting the subject matter. No change, alteration, modification, addition, or qualification to the terms of this Agreement shall be made or be binding unless made in writing and signed by each of the parties.

**SECTION 22.9 – NO THIRD PARTY BENEFIT:** This Agreement is intended for the exclusive benefit of Owner and Operator and their respective permitted successors and assigns, and nothing contained in this Agreement shall be construed as creating any right or benefit in or to any third party.

**SECTION 22.10 – NONWAIVER:** No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of the other party shall affect or constitute a waiver of the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default, nor shall any custom or practice of the parties at variance with any provision of this Agreement

affect, or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.

**SECTION 22.11 – PAYMENT OF CLAIMS BY OWNER:** Owner's election to pay invoices or other claims for payment to Operator in less than 60 days following the receipt of such invoice or claim shall not constitute a waiver of Iowa Code section 8A.514, and shall not result in the payment off any penalty or interest thereon.

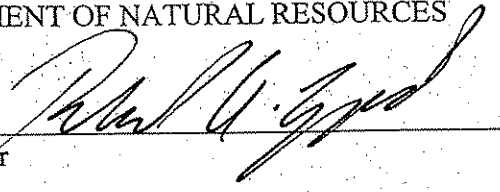
**SECTION 22.12 – CONSTRUCTION OF AGREEMENT:** The captions at the beginnings of the several articles, sections, and subsections of this Agreement are not part of the context hereof, but are merely labels to assist in locating and reading those articles, sections, and subsections, and shall be ignored in construing this Agreement.

**SECTION 22.13 – COUNTERPART EXECUTION:** This Agreement may be executed in several counterparts and each such executed counterpart shall be considered as an original of this Agreement.

IN WITNESS WHEREOF, the Owner enters into this Agreement as of the Commencement Date.


DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Director

A handwritten signature in dark ink, appearing to read "Paul W. Gipe", is written over a horizontal line. The signature is fluid and cursive.

IN WITNESS WHEREOF, the Operator enters into this Agreement as of the Commencement Date.

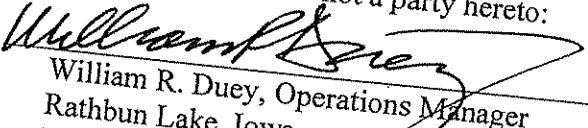
CENTRAL GROUP MANAGEMENT, LLC

By:   
President/CEO



APPROVAL OF UNITED STATES ARMY CORPS OF ENGINEERS

Approved as to form but not a party hereto:

  
William R. Duey, Operations Manager  
Rathbun Lake, Iowa  
United States Army Corps of Engineers

**EXHIBIT A  
INSURANCE**

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability and premises liability)	General Aggregate	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	\$5 Million \$5 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Aggregate	\$38 Million
Business Interruption Insurance		18 months

**EXHIBIT B**  
**PRE-OPENING BUDGET**

**EXHIBIT C**  
**REIMBURSEMENT REQUEST**

Date: \_\_\_\_\_

TO: Iowa Department of Natural Resources, attn: \_\_\_\_\_

FROM: Central Group Management, LLC (the "Operator")

Pursuant to, and in accordance with, the provisions Article Eight of the Hotel Management Agreement (the "Hotel Management Agreement") dated as of \_\_\_\_\_ between the Iowa Department of Natural Resources (the "Department") and the Operator is requesting reimbursement for the following Operating Expenses of the Hotel (all capitalized terms used herein shall have the same meaning given such terms in the Hotel Management Agreement):

1. [list Operating expenses, showing the amount, nature of each item, and date paid]

Attached hereto is a statement, invoice or other evidence of the foregoing Operating Expenses which have been paid by the Operator and for which Operator is seeking reimbursement from the Department.

WE HEREBY CERTIFY THAT:

(a) Each item for which payment or reimbursement is requested is an eligible Operating Expense and is or was necessary in connection with the operation of the Hotel.

(b) None of the items for which reimbursement is being requested has been previously reimbursed by the Department; and

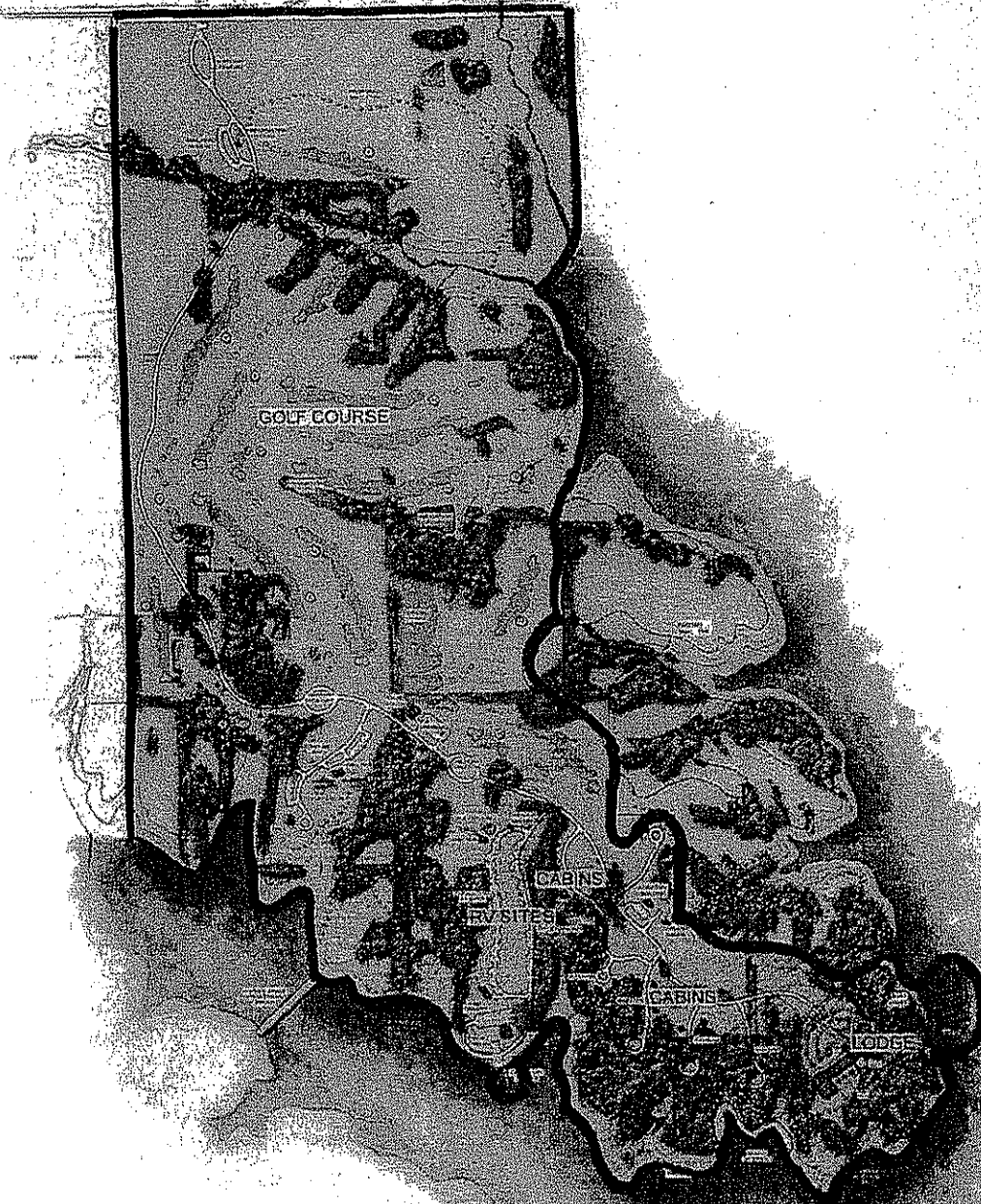
(c) The payment with respect to which this reimbursement is being requested has been properly made in accordance with the Hotel Management Agreement and is a proper Operating Expense.

(d) The reimbursement [is/is not] within the [Initial/Annual Operating Budget] [attach explanation for any deviation from the applicable budget].

By \_\_\_\_\_  
Authorized Representative of Operator

Copy to: \_\_\_\_\_

EXHIBIT D  
MAP



SITE PLAN



**EXHIBIT E**  
**LEASE NO. DACW41-1-97-233**



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

December 8, 2005

Civil Branch

SUBJECT: Transmittal of Supplemental Agreement No. 2 to Lease DACW41-1-97-233,  
Rathbun Lake, Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the executed Supplemental Agreement No. 2 to Lease DACW41-1-97-233  
that extends the term of the current lease to December 31, 2045.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of  
my staff at 816-983-3917.

Sincerely,

Greg G. Wilson  
Chief, Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 2  
TO LEASE NO. DACW41-1-97-233  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES  
RATHBUN LAKE  
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa, party of the second part, WITNESSETH THAT:

**WHEREAS**, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of Twenty Five (25) years, beginning January 1, 1998 and ending December 31, 2022 and;

**WHEREAS**, both parties hereto executed Supplemental Agreement No. 1 to Lease DACW41-1-97-233 on the 25<sup>th</sup> day of February 2004 adding approximately 1.85 acres of land to the leasehold and;

**WHEREAS**, it is the desire of the Iowa Department of Natural Resources to extend the term of the lease to facilitate sale of state revenue generating bonds for the development of the Honey Creek State Resort facility;

**WHEREAS**, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

- a. Condition 1 TERM is deleted in its entirety.
- b. Condition 1 TERM is inserted as follows: *Said premises are hereby leased for a term of Forty-Seven (47) years beginning January 1, 1998 and ending December 31, 2045.*



CERTIFICATE OF AUTHORITY

I KARYN Stone (name) certify that I am the  
notary for the Iowa Department of Natural Resources,  
that Liz Christiansen (signator of outgrant) who signed  
the foregoing instrument on behalf of the grantee was then  
Deputy Director (title of signator of outgrant) of the Iowa  
Department of Natural Resources. I further certify that the  
said officer was acting within the scope of powers delegated to  
this officer by the governing body of the grantee in executing  
said instrument.

Iowa Department of Natural Resources

Date: 12-2-05

Karlyn G. Stone, Notary  
Clerk or Appropriate Official

4-24-06  
(AFFIX SEAL)



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

November 30, 2005

Civil Branch

SUBJECT: Transmittal of Proposed Supplemental Agreement No. 2 to Lease DACW41-1-97-233, Rathbun Lake, Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

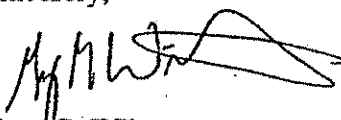
Dear Mr. Sohn:

I am enclosing a proposed Supplemental Agreement No. 2 to Lease DACW41-1-97-233 to extend the term of the current lease to December 31, 2045. This increased lease term will permit the sale of state bonds to generate revenue for the Honey Creek State Resort Park at Rathbun Lake, Iowa.

If the proposed document is satisfactory, please have the appropriate official of your organization date and sign the document. Have another official of your organization complete, date and sign the Certificate of Authority. Please return all completed documents to this office in the enclosed return envelope.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

  
Greg G. Wilson  
Chief, Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 2  
TO LEASE NO. DACW41-1-97-233  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES  
RATHBUN LAKE  
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa, party of the second part, WITNESSETH THAT:

**WHEREAS**, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of Twenty Five (25) years, beginning January 1, 1998 and ending December 31, 2022 and;

**WHEREAS**, both parties hereto executed Supplemental Agreement No. 1 to Lease DACW41-1-97-233 on the 25<sup>th</sup> day of February 2004 adding approximately 1.85 acres of land to the leasehold and;

**WHEREAS**, it is the desire of the Iowa Department of Natural Resources to extend the term of the lease to facilitate sale of state revenue generating bonds for the development of the Honey Creek State Resort facility;

**WHEREAS**, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

- a. Condition 1 TERM is deleted in its entirety.
- b. Condition 1 TERM is inserted as follows: *Said premises are hereby leased for a term of Forty-Seven (47) years beginning January 1, 1998 and ending December 31, 2045.*

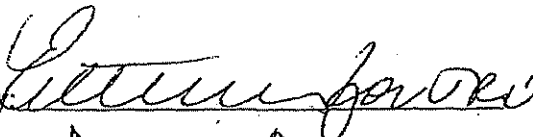
This Supplemental Agreement No.2 to Lease No. DACW41-1-97-233 is not subject to Title 10, U.S.C., Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
GREG G. WILSON  
Chief, Real Estate Division

This Supplemental Agreement No. 2 to Lease No. DACW41-1-97-233 is also executed by the grantee this 22<sup>d</sup> day of December, 2005.

*Iowa Department of Natural Resources*

By:   
Title: Deputy Director

CERTIFICATE OF AUTHORITY

I KARYN Stone (name) certify that I am the  
notary for the Iowa Department of Natural Resources,  
that Liz Christiansen (signator of outgrant) who signed  
the foregoing instrument on behalf of the grantee was then  
Deputy Director (title of signator of outgrant) of the Iowa  
Department of Natural Resources. I further certify that the  
said officer was acting within the scope of powers delegated to  
this officer by the governing body of the grantee in executing  
said instrument.

Iowa Department of Natural Resources

Date: 12-2-05

Karlyn G. Stone, Notary  
Clerk or Appropriate Official

4-20-06  
(AFFIX SEAL)



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

May 10, 2005

Civil Branch

SUBJECT: Administrative Correction for Consent No.DACW41-2-04-0028, Rathbun Lake,  
Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

Dear Mr. Sohn:

During a routine out-grant review in our office, the assigned number of this consent was found to be incorrect. We have made pen and ink changes to our record copy and request you also correct your copy of this consent document.

Request you change any references to document number DACW41-2-04-0028 to show the corrected number as **DACW41-3-04-0028**. This administrative change does not impact the term or any other conditions of the outgrant document.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

A handwritten signature in cursive script, reading "Anne L. Kosel", is positioned above the typed name.

Anne L. Kosel  
Chief, Civil Branch  
Real Estate Division

Copies Furnished:  
OD-TR  
OF-RA

7780 PM12:08 05/13/05



DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

February 9, 2004

REPLY TO  
ATTENTION OF

Civil Branch

SUBJECT: Transmittal of Proposed Consent No. <sup>3</sup>DACW41-04-0028, Rathbun Lake, Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the subject Consent to Easement Structures for the construction, operation and maintenance of a road within Tract Nos. 236E & 236E-2, Rathbun Lake, Iowa.

Please have the appropriate official of your organization sign and date all three copies of the proposed document. Have another official of your organization complete, date and sign all three copies of the Corporate Certificate. Then return all completed documents to this office in the enclosed self-addressed envelope.

You will receive an executed copy for your records. Upon completion of the work, please contact the Operations Manager at Rathbun Lake Reservoir, to make an appointment for a joint inspection of the completed work.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

Karl Mueller  
Acting Chief, Civil Branch  
Real Estate Division

Enclosure

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
KANSAS CITY DISTRICT  
RATHBUN LAKE, APPANOOSE COUNTY, IOWA

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States, has acquired a perpetual flowage easement and rights over Tract No(s). 236E, Rathbun Lake, Iowa, from Clarence L. Hiner, a single person and Floyd W. Hiner a single person by virtue of Warranty Deed dated April 19, 1966 and recorded at Appanoose County on April 19, 1966, Book 102, page 142; and Tract No 236E-2, Rathbun Lake, Iowa, from Clarence L. Hiner a single person and Floyd W. Hiner, a single person, by virtue of Deed of Road Easement dated March 14, 1967, recorded at Appanoose County on March 14, 1967, Book 102, page 282;

WHEREAS, said easements, grant to the United States the right of prior approval for any structures, excavation or fill to be located within the said easement area, which area is under the administrative control of the Kansas City District, Corps of Engineers.

WHEREAS, the United States has been requested to give consent to Construct and Maintain a Road on the above identified Tract(s).

NOW THEREFORE, the United States hereby gives consent to Iowa Department of Natural Resources to Construct and Maintain a Road at the location shown on EXHIBIT "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States' prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from the future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.



CERTIFICATE OF AUTHORITY

I Lisa Dale (name) certify that I am the Executive Secretary  
(title) of Iowa DNR, that Jeffrey Vornk (signator of outgrant)  
who signed the foregoing instrument on behalf of the grantee was then Director  
(title of signator of outgrant) of Iowa DNR. I further certify that the said officer was  
acting within the scope of powers delegated to this governing body of the grantee in executing  
said instrument.

IOWA DEPARTMENT OF NATURAL RESOURCES

Date: 3/17/04

Lisa Dale  
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04

Rathbun Lake Destination Park  
Road Location

241

236E

236E-2

236

235-1

235-2

**Legend**

- New Road
- - - Corps Boundary
- Tract Boundary

Rathbun Lake

236E-3

236E-4

236E-5

236E-6

236E-7

236E-8

236E-9

236E-10

236E-11

236E-12

236E-13

236E-14

236E-15

236E-16

236E-17

236E-18

236E-19

236E-20

236E-21

236E-22

236E-23

236E-24

236E-25

236E-26

236E-27

236E-28

236E-29

236E-30

236E-31

236E-32

236E-33

236E-34

236E-35

236E-36

236E-37

236E-38

236E-39

236E-40

236E-41

236E-42

236E-43

236E-44

236E-45

236E-46

236E-47

236E-48

236E-49

236E-50

236E-51

236E-52

236E-53

236E-54

236E-55

236E-56

236E-57

236E-58

236E-59

236E-60

236E-61

236E-62

236E-63

236E-64

236E-65

236E-66

236E-67

236E-68

236E-69

236E-70

236E-71

236E-72

236E-73

236E-74

236E-75

236E-76

236E-77

236E-78

236E-79

236E-80

236E-81

236E-82

236E-83

236E-84

236E-85

236E-86

236E-87

236E-88

236E-89

236E-90

236E-91

236E-92

236E-93

236E-94

236E-95

236E-96

236E-97

236E-98

236E-99

236E-100

236E-101

236E-102

236E-103

236E-104

236E-105

236E-106

236E-107

236E-108

236E-109

236E-110

236E-111

236E-112

236E-113

236E-114

236E-115

236E-116

236E-117

236E-118

236E-119

236E-120

236E-121

236E-122

236E-123

236E-124

236E-125

236E-126

236E-127

236E-128

236E-129

236E-130

236E-131

236E-132

236E-133

236E-134

236E-135

236E-136

236E-137

236E-138

236E-139

236E-140

236E-141

236E-142

236E-143

236E-144

236E-145

236E-146

236E-147

236E-148

236E-149

236E-150

236E-151

236E-152

236E-153

236E-154

236E-155

236E-156

236E-157

236E-158

236E-159

236E-160

236E-161

236E-162

236E-163

236E-164

236E-165

236E-166

236E-167

236E-168

236E-169

236E-170

236E-171

236E-172

236E-173

236E-174

236E-175

236E-176

236E-177

236E-178

236E-179

236E-180

236E-181

236E-182

236E-183

236E-184

236E-185

236E-186

236E-187

236E-188

236E-189

236E-190

236E-191

236E-192

236E-193

236E-194

236E-195

236E-196

236E-197

236E-198

236E-199

236E-200

236E-201

236E-202

236E-203

236E-204

236E-205

236E-206

236E-207

236E-208

236E-209

236E-210

236E-211

236E-212

236E-213

236E-214

236E-215

236E-216

236E-217

236E-218

236E-219

236E-220

236E-221

236E-222

236E-223

236E-224

236E-225

236E-226

236E-227

236E-228

236E-229

236E-230

236E-231

236E-232

236E-233

236E-234

236E-235

236E-236

236E-237

236E-238

236E-239

236E-240

236E-241

236E-242

236E-243

236E-244

236E-245

236E-246

236E-247

236E-248

236E-249

236E-250

236E-251

236E-252

236E-253

236E-254

236E-255

236E-256

236E-257

236E-258

236E-259

236E-260

236E-261

236E-262

236E-263

236E-264

236E-265

236E-266

236E-267

236E-268

236E-269

236E-270

236E-271

236E-272

236E-273

236E-274

236E-275

236E-276

236E-277

236E-278

236E-279

236E-280

236E-281

236E-28

New Road  
 Corps Boundary  
 Tract Boundary

**DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
KANSAS CITY DISTRICT  
RATHBUN LAKE, APPANOOSE COUNTY, IOWA**

**CONSENT TO EASEMENT STRUCTURES**

**WHEREAS**, the United States, has acquired a perpetual flowage easement and rights over Tract No(s). 236E, Rathbun Lake, Iowa, from Clarence L. Hiner, a single person and Floyd W. Hiner a single person by virtue of Warranty Deed dated April 19, 1966 and recorded at Appanoose County on April 19, 1966, Book 102, page 142; and Tract No 236E-2, Rathbun Lake, Iowa, from Clarence L. Hiner a single person and Floyd W. Hiner, a single person, by virtue of Deed of Road Easement dated March 14, 1967, recorded at Appanoose County on March 14, 1967, Book 102, page 282;

**WHEREAS**, said easements, grant to the United States the right of prior approval for any structures, excavation or fill to be located within the said easement area, which area is under the administrative control of the Kansas City District, Corps of Engineers.

**WHEREAS**, the United States has been requested to give consent to Construct and Maintain a Road on the above identified Tract(s).

**NOW THEREFORE**, the United States hereby gives consent to Iowa Department of Natural Resources to Construct and Maintain a Road at the location shown on EXHIBIT "A" attached hereto;

**PROVIDED HOWEVER**, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States' prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from the future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.

**CERTIFICATE OF AUTHORITY**

I Lisa Ogle (name) certify that I am the Executive Secretary  
(title) of Iowa DNR, that Jeffrey Vomk (signator of outgrant)  
who signed the foregoing instrument on behalf of the grantee was then Director  
(title of signator of outgrant) of Iowa DNR. I further certify that the said officer was  
acting within the scope of powers delegated to this governing body of the grantee in executing  
said instrument.

**IOWA DEPARTMENT OF NATURAL RESOURCES**

Date: 3/17/04

Lisa Ogle  
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04



DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

February 25, 2004

Civil Branch

SUBJECT: Transmittal of Consent No.DACW41-2-04-0028, Rathbun Lake, Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the executed Consent to Easement Structures for the construction, operation and maintenance of a road within Tract Nos. 236E & 236E-2, Rathbun Lake, Iowa.

Upon completion of the work, please contact the Operations Officer at Rathbun Lake Reservoir, to make an appointment for a joint inspection of the completed work.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

Karl Mueller  
Acting Chief, Civil Branch  
Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 1  
TO LEASE NO. DACW41-1-97-233  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES  
RATHBUN LAKE  
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa; party of the second part, WITNESSETH THAT:

**WHEREAS**, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of **Twenty Five (25)** years, beginning January 1, 1998 and ending December 31, 2022 and;

**WHEREAS**, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

**WHEREAS**, both parties hereto are desirous of identifying approximately 1.85 acres of land located in Tract Nos. 241, 236, 235-1 and 235-2 for the construction and maintenance of a road for entrance to Honey Creek Resort State Park:

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

Add Exhibit "F" page 1, to the lease showing the road location.

CERTIFICATE OF AUTHORITY

I Lisa Ogile (name) certify that I am the  
Executive Secretary for the Iowa Department of Natural Resources,  
that Jeffrey Vank (signator of outgrant) who signed  
the foregoing instrument on behalf of the grantee was then  
Director (title of signator of outgrant) of the Iowa  
Department of Natural Resources. I further certify that the  
said officer was acting within the scope of powers delegated to  
this officer by the governing body of the grantee in executing  
said instrument.

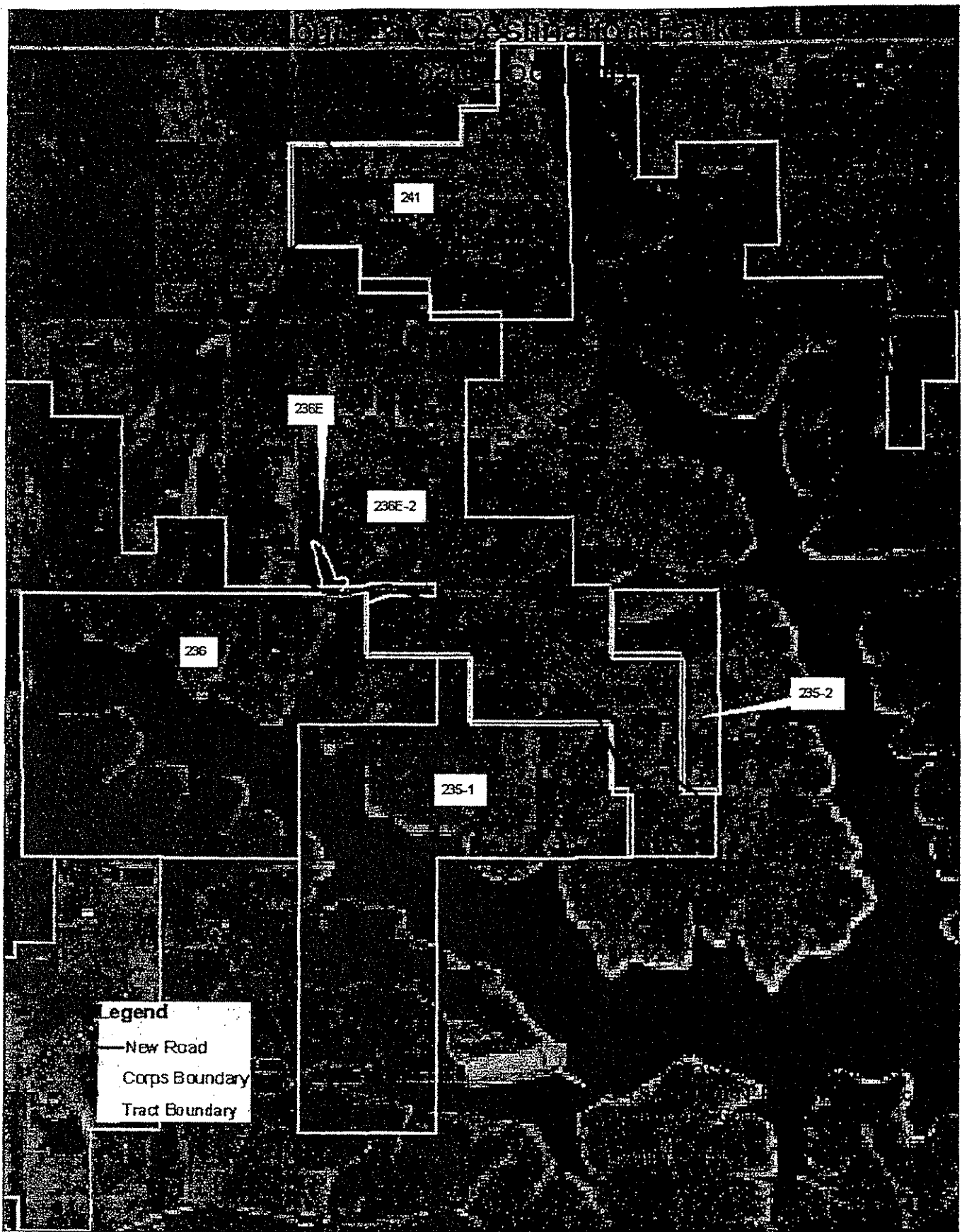
Iowa Department of Natural Resources

Date: 2/17/04

Lisa Ogile  
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04







REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

February 25, 2004

Civil Branch

SUBJECT: Transmittal of Supplemental Agreement No. 1 to Lease DACW41-1-97-233,  
Rathbun Lake, Iowa

Iowa Department of Natural Resources  
ATTN: Mr. Arnie Sohn  
Wallace Building  
502 East 9th Street  
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing Supplemental Agreement to Lease DACW41-1-97-233 for the  
construction, operation and maintenance of a road within Tract Nos. 241, 236, 235-1 and 235-2,  
at Rathbun Lake, Iowa.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of  
my staff at 816-983-3917.

Sincerely,

A handwritten signature in black ink, reading "Karl Mueller", is positioned above the typed name.

Karl Mueller  
Acting Chief, Civil Branch  
Real Estate Division

Enclosure



*This lease covers the area surrounding the Rathbun Resort Complex*  
To: John Beaman - copy for your files.

DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

-St. Paul

REPLY TO  
ATTENTION OF:

January 18, 1998

Real Estate Division

State of Iowa  
Office of the Director  
Mr. Larry J. Wilson  
Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50319

Dear Mr. Wilson:

Enclosed is your executed copy of Lease DACW41-1-97-233, which grants the state the authority for a public park and recreational area at Rathbun Lake, Appanoose County, Iowa.

Please retain for your records.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to write or telephone me at 816-983-3749.

Sincerely,

Roy B. Shelton, Jr.  
Acting Chief, Management and Disposal  
Branch  
Real Estate Division

Enclosure

RECEIVED

JAN 21 1998

Director's Office

DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES  
RATHBUN LAKE  
APPANOOSE COUNTY, IOWA

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and the STATE OF IOWA, DEPARTMENT OF NATURAL RESOURCES, hereinafter referred to as the Lessee, an instrumentality of said state, with its principal office at the Wallace State Office Building, Des Moines, Iowa 50319.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibits "A" and "B", attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of twenty five years, beginning January 1, 1998 and ending December 31, 2022.

2. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, U.S. Army Corps of Engineer, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed

Park Lease  
30 Sep 1994

as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

#### 4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

#### 5. DEVELOPMENT PLANS

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit "C" which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION. However, no structures may be erected upon the premises unless and until the proposed location shall have been approved in writing by the District Engineer. The District Engineer may require the lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

#### 7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those

regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

#### 8. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

#### 9. FACILITIES AND SERVICES

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on DEVELOPMENT PLANS either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the District Engineer,

the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

#### 11. FEES

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. The lessee agrees that its expenditures in the administration, maintenance, operation, of the leased premises will not be less than the income obtained from operations on the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

#### 13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or

damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

#### 14. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

#### 15. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

#### 16. INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

#### 17. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements



imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

## 22. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## 23. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

## 24. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Commanders may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute

a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

d. In accordance with Public Law 104-52, Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act, cigarette vending machines will not be permitted on the leased premises, unless such vending machine is located in an area prohibited to minors, as allowed under the Act. Over-the-counter cigarette sales remain permissible.

## 25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on DEVELOPMENT PLANS herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

## 26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or

written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
- (iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

- (i) A senior company official in charge at the Lessee's location involved; or
- (ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the

District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage

nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

#### 28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit "D". Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on RESTORATION.

#### 29. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

b. Known cultural resource sites are located on this area including but not limited to two designated prehistoric sites and one historic grave on Tract 208. Any planned soil disturbance must be submitted as plans to the Corps of Engineers for review and approval prior to any actual soil movement.

#### 30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

33. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

34. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall

obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

### 36. SPECIAL CONDITIONS

a. Areas of Native Prairie species are to be preserved for their inherent value. These areas are located on Tracts 234, 235-2, 235-1, 244-1, and 208, as shown on EXHIBIT "E", and are not to be disturbed or altered without additional evaluation and approval by the District Engineer. The Native Prairie species and locations are as follows:

1. Tract 234 (25PN) contains one of the largest stands of native prairie grass with the vegetation being composed of Native Indian grass, Native Big Bluestem, and Native Little Bluestem, with some forb species being present.

2. Tract 235-2 (22PR) contains patches that could be remnants of the original prairie. Vegetation consisting of Native Indian and Big Bluestem grasses, Native Pale Purple Coneflower and Purple Prairie Clover.

3. Tract 235-1 (13PN & 7PR) contains patches of prairie grasses and Compass plants.

4. Tract 244-1 (28iv/PN) contains patches of Compass Plants and Pale Purple Coneflowers.

5. Tract 208 (17iv/PN) contains at least one population of native gentian.

b. Boundary Monuments - The boundary between Federal and State - owned land consists of 27 corner monuments (AP818 through AP785), which cannot be removed. Any construction activity around these monuments will be coordinated with the Rathbun Project Manager.

c. The act of leasing the site for the proposed use as a state park will not require further Environmental and Historic Property Analysis (NEPA) review. However, before any construction is initiated, a plot plan showing the location of the proposed structure must be submitted to the Corps of Engineers for a final NEPA review and clearances before any movement of soil.



IN WITNESS WHEREOF I have hereunto set my hand by  
authority/direction of the Secretary of the Army this 14<sup>th</sup> day  
of January, 1997.

1998.  
W

Charles B. Barton

by:

Title:

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of  
\_\_\_\_\_, 1997.

Iowa Department of Natural Resources

[Signature]  
By:  
Title:

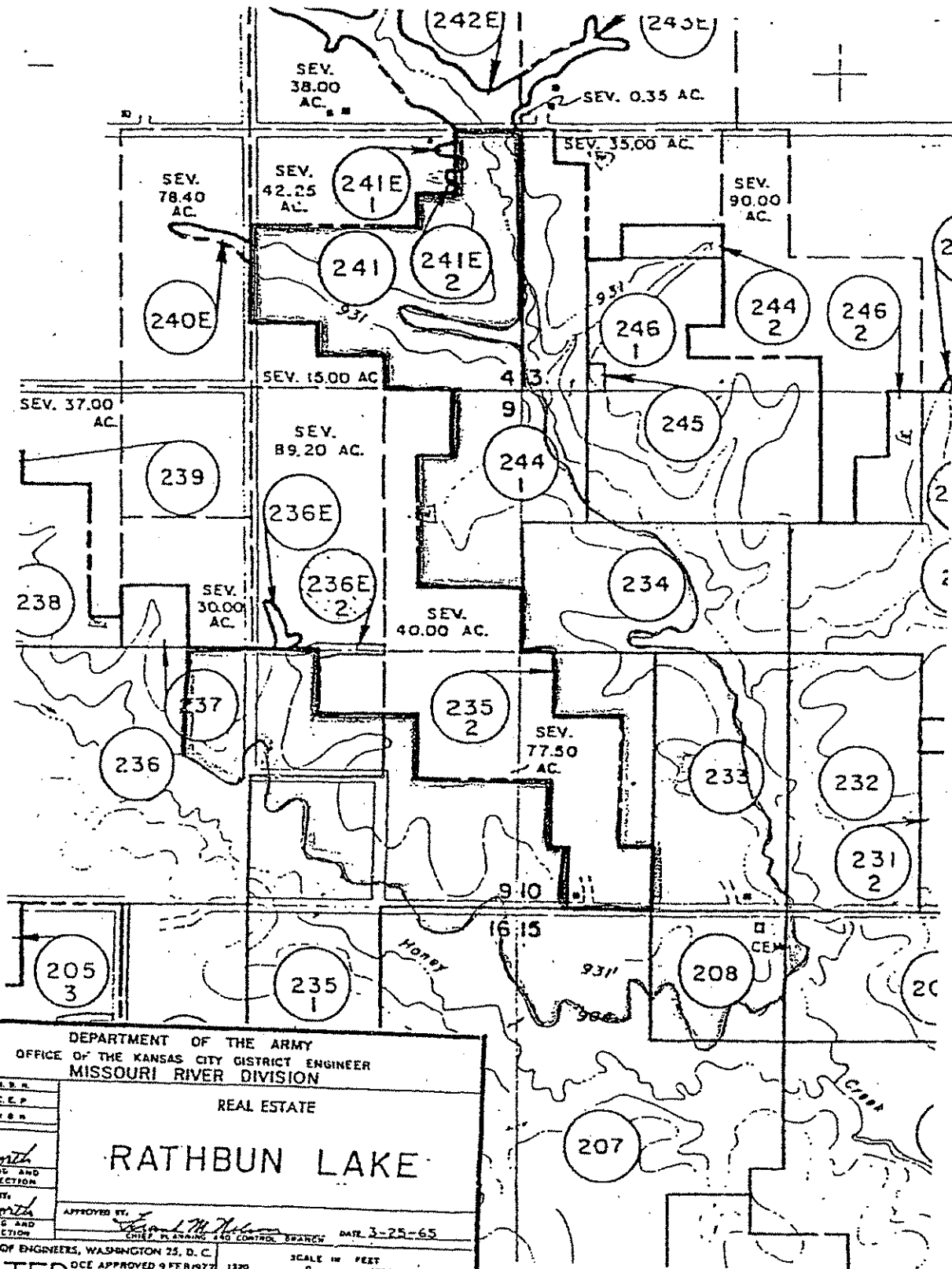
**LEGAL DESCRIPTION**  
**LEASE NO. DACW41-1-97-233**  
**IOWA STATE CONSERVATION COMMISSION**  
**RATHBUN DAM AND RESERVOIR PROJECT, IOWA**

A tract of land lying within the U.S. Government Reservation, Rathbun Reservoir, situated in Sections 3, 4, 9, 10, 15, and 16, all in Township 70 North, Range 18 West of the Fifth Principal Meridian, Appanoose County, Iowa, more particularly described as follows:

Beginning at the Northwest corner of the ~~E~~~~E~~~~S~~~~E~~ of Section 4; thence South to a point at the Northeast corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence West to a point at the Northwest corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence South to a point at the Northeast corner of the ~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence West to a point at the Northwest corner of the ~~S~~~~S~~~~N~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~N~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence East to a point at the Northwest corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence East to a point at the Southeast corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~W~~~~S~~~~E~~~~S~~~~E~~ of Section 4; thence East along the South line of Section 4 to a point at the Northwest corner of the ~~E~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence South to a point at the Northeast corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence West to a point at the Northwest corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~W~~~~S~~~~E~~~~N~~~~E~~ of Section 9; thence East to a point at the Southeast corner of the ~~N~~~~E~~~~S~~~~E~~~~N~~~~E~~ of Section 9; thence South along the East line of Section 9 (West line Section 10) to a point at the Southwest Corner of the ~~N~~~~W~~~~S~~~~E~~ of Section 10; thence East to a point at the Northwest corner of the ~~E~~~~N~~~~W~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~W~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence East to a point at the Northwest corner of the ~~E~~~~S~~~~E~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence East to a point at the Southeast corner of the ~~E~~~~N~~~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West along the South line of Section 10 to a point at the Southeast corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence North to a point at the Northeast corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West to a point at the Northwest corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence North to a point at the Northeast corner of the ~~W~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West to a point at the Southeast corner of the ~~W~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 9; thence North to a point at the Northeast corner of the ~~W~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 9; thence West to a point at the Northwest corner of the ~~S~~~~E~~~~N~~~~W~~~~S~~~~E~~ of Section 9; thence North to a point at the Northeast corner of the ~~W~~~~N~~~~W~~~~S~~~~E~~ of Section 9; thence West to a point at the Southeast corner of the ~~S~~~~W~~~~S~~~~E~~~~N~~~~W~~ of Section 9; thence south to a point having a ground elevation of 904 feet (m.s.l.); thence in a southeasterly direction along the 904-foot contour line to a point on the East line of Section 16 (West line of Section 15); thence continuing in a East-Northeasterly direction along the 904-foot contour line to a point on the North line of Section 15 (South line of Section 10); thence continuing in a North-Northwestwardly direction along the 904-foot contour line to a point where said contour line intersects the West line of Section 3 (East line of Section 4); thence continuing along the 904-foot contour line in a Westwardly direction to curve to the right and continuing in a eastwardly direction to a point where said contour line intersects the East line of Section 4; thence North along the East line of Section 4

EXHIBIT "A"

to the Northeast corner of the SE $\frac{1}{4}$  of Section 4; thence West to the Northwest corner of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4, to the point of beginning, containing 475 acres more or less.



DEPARTMENT OF THE ARMY OFFICE OF THE KANSAS CITY DISTRICT ENGINEER MISSOURI RIVER DIVISION	
REAL ESTATE	
RATHBUN LAKE	
DRAWN BY: H. B. H. TRACED BY: C. E. P. CHECKED BY: H. B. H. SUBMITTED BY: H. B. H. CHIEF, PLANNING AND CADASTRAL SECTION RECOMMENDED BY: H. B. H. CHIEF, PLANNING AND CADASTRAL SECTION	APPROVED BY: <i>[Signature]</i> CHIEF, PLANNING AND CONTROL SECTION DATE: 3-25-65
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D. C. AUDITED KC-2-0010	SCALE IN FEET 1320 0 1320 2640 SHEET 2 OF 11 DRAWING NO. 16 C-1-2

EXHIBIT "B"

Lease No. DACW41-1-97-233

# DEVELOPMENT PLAN

EXHIBIT "C"

DEVELOPMENT PLAN(\*)  
RATHBUN RECREATION COMPLEX  
DECEMBER 18, 1997

<u>Construction Item</u>	<u>Number and Size</u>	<u>Estimated Cost</u>
	YEAR 1	
Cabins	2	\$150,000
	YEAR 2	
Ramp/Trails	-	\$40,000
	YEAR 3	
Cabins	2	\$150,000
	YEAR 4	
Cabins	2	\$150,000
	YEAR 5	
Amenities	-	\$100,000

(\*) Plans are still evolving for the full range of facilities to be provided. Amendments and additions are anticipated. The conceptual master plan for the Rathbun Recreation Complex most recently prepared by the Chariton Valley RC&D of Centerville, Iowa, represents the ultimate level of development. Implementation is projected as an incremental process. Precise location of all facilities will be subject to further review and approval by the U.S. Army Corps of Engineers and the Department of Natural Resources. Presence of archaeological or natural features such as native prairie remnants will be sufficient cause to relocate facilities which have only been conceptually located at this time.

At current levels of projected development, it is anticipated that 1 FTE will be required to operate and maintain the cabin facilities which constitute the primary development during the first five years.

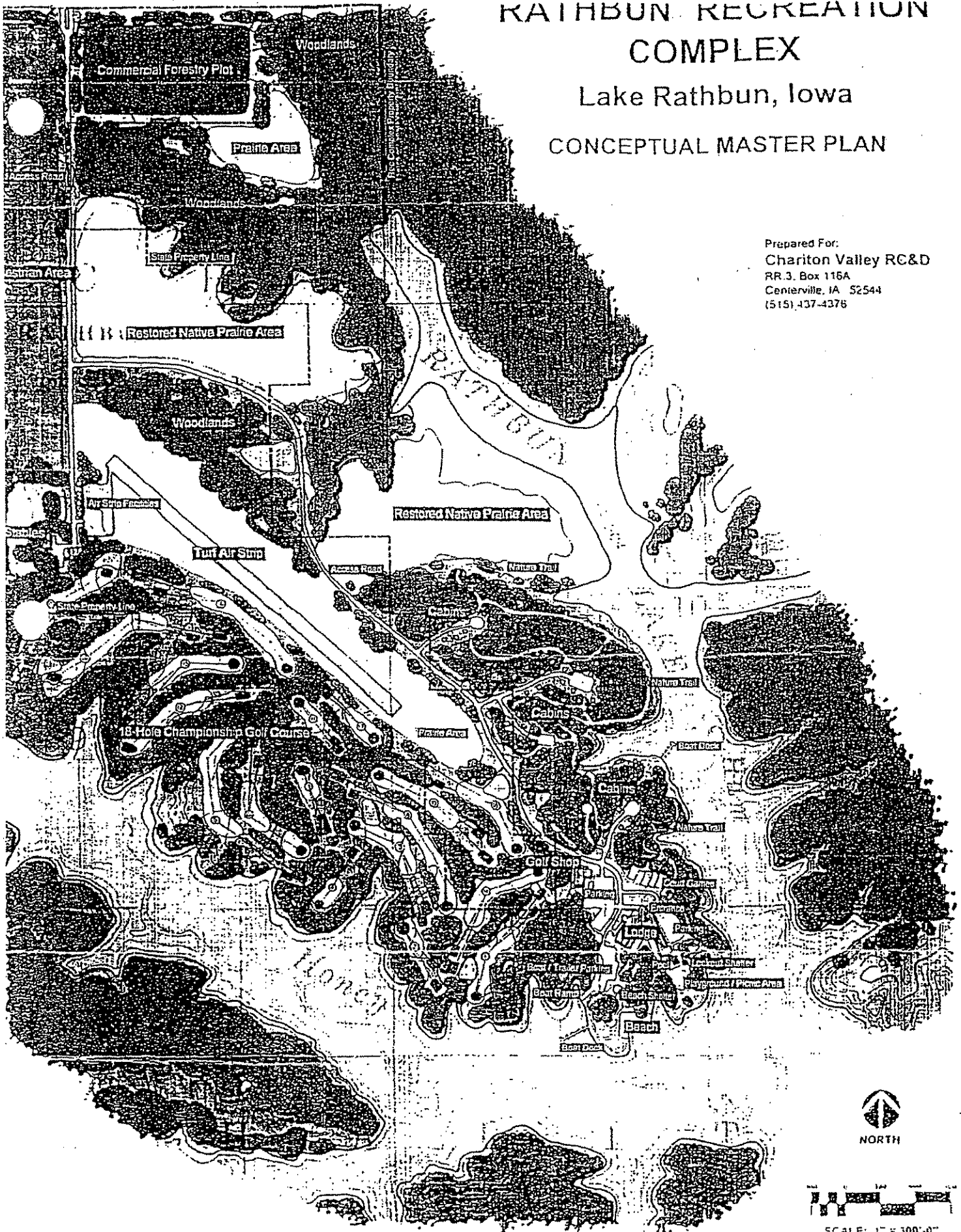
Funding and operation responsibilities remain to be identified, but are anticipated to be private or quasi-public partnerships and/or concession operations.

# RATHBUN RECREATION COMPLEX

Lake Rathbun, Iowa

## CONCEPTUAL MASTER PLAN

Prepared For:  
Chariton Valley RC&D  
RR. 3, Box 116A  
Centerville, IA 52544  
(515) 437-4378



U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT  
PRELIMINARY ASSESSMENT SCREENING (PAS)  
RATHBUN LAKE

1. Real Property Transaction: Proposed grant of (X) lease  
( ) license ( ) easement ( ) permit ( ) deed or ( ) sale of building to  
Iowa Department of Natural Resources for Resort Lodge Complex (RECREATION)  
purposes for a term of 25 years.

2. A description of the real property will be included in the outgrant.

3. Rathbun Project Records were searched on 14 February 1997 by Paul A.  
Egeland for any history of hazardous substance activity on the site.

(X) The search did not reveal any evidence of hazardous substance  
release, storage, or disposal exceeding CERCLA\* thresholds.

(X) The search or other reason prompted an on-site survey, attached.

Signed By: Paul A. Egeland

Title: Natural Resource Specialist (Ranger)

Date: 14 February 1997

4. Construction-Operations Division records were searched on 7/22/97  
by [print] John Lucido for any history of hazardous substance  
activity on the site.

(X) The search did not reveal any evidence of hazardous substance  
release, storage, or disposal exceeding CERCLA thresholds.

( ) The search or other reason prompts an on-site survey, attached.

Signed By: John Lucido

Title: Biologist

Date: 7/22/97

5. Records of Real Estate Division were searched on SEPT 3 1997 by  
[print] Roy Shelton for any history of hazardous substance activity  
on the site.

(✓) The search did not reveal any evidence of hazardous substance  
release, storage, or disposal exceeding CERCLA thresholds.

( ) The search or other reason prompts on-site survey, attached.

Signed By: Roy D. Shelton

Title: Realty Specialist

Date: SEPT 3 1997

6. Conclusion:

(✓) PAS indicates no necessity to provide notice under CERCLA nor any  
environmental conditions to affect the proposed real property transaction.

( ) PAS indicates a positive finding which requires further investigation  
and reporting.

Note: On-site surveys performed by Project personnel.

\* Comprehensive Environmental Response, Compensation, and Liability  
Act

Attachment 2

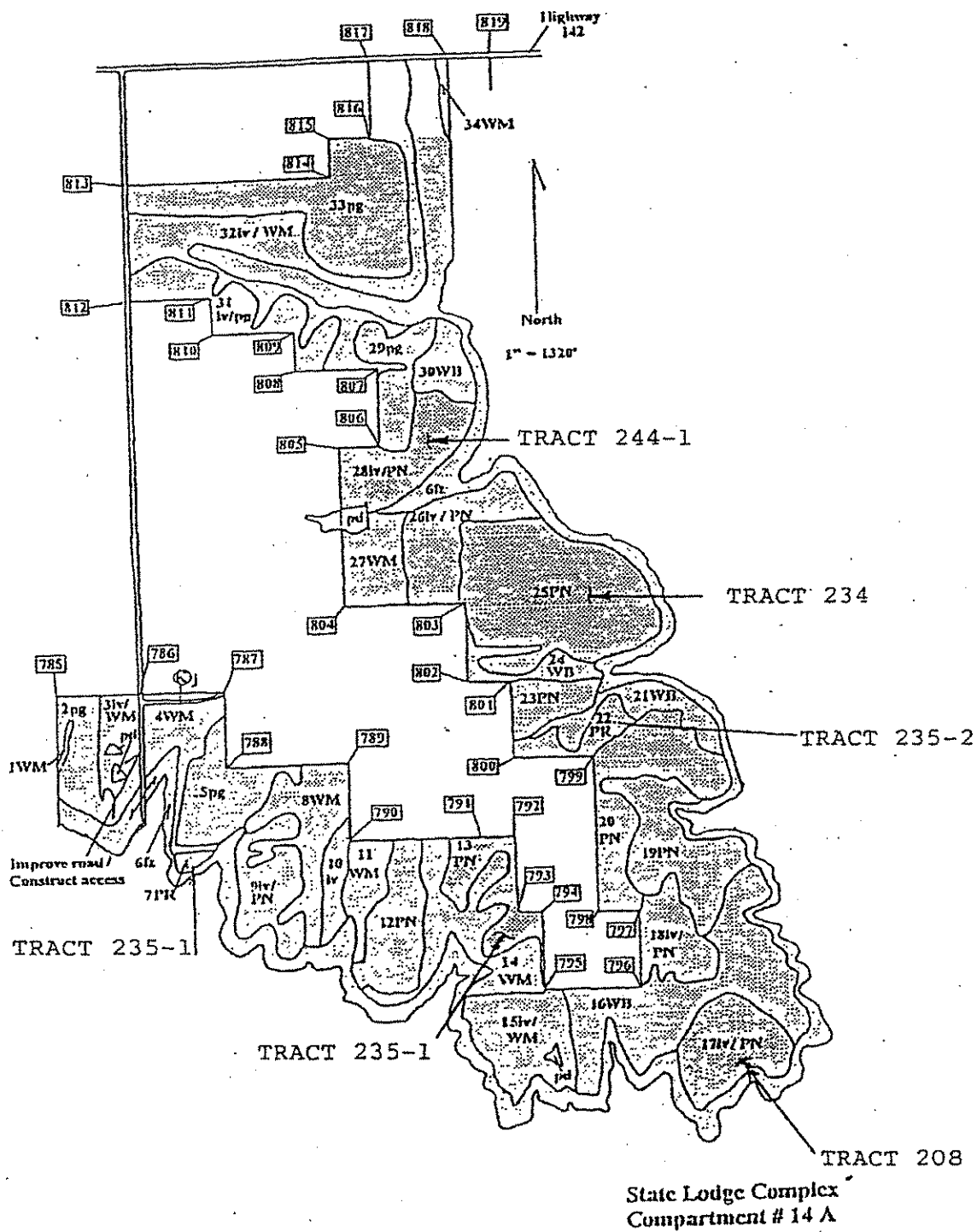
EXHIBIT "D"



No. DACW42-1-97-233

## Native Prairie Species

EXHIBIT "E"



## NATURAL RESOURCE OMP MAP LEGEND

On each OMP Compartment Map, sub compartments are delineated and numbered for location and labeled for cover type, management practice or other significant item. A typical label "16wc" means this sub compartment area number "16" is a conifer tree planting.

### COVER TYPE CODES \*

fz = Flood Zone, annual forbs: smartweed, foxtail, etc.  
fp = Food Plot, annual forbs: corn, etc.  
pd = Pond, built  
wt = Wetland, built  
WT = Wetland, natural  
tf = Turf, mown grass with scattered shade trees  
iv = Introduced Vegetation, alien grass and forbs  
PR = Prairie Relic, original prairie: very rare  
PN = Prairie Natives, native grass and forb species  
pp = Prairie Planted to warm season grass and forbs  
pg = Prairie Grass planted to warm season grass  
WW = Woodland - White oak with other trees  
WB = Woodland - Bur oak with other trees  
WL = Woodland - Linden with other trees  
WM = Woodland - Mixture lacking white oak, bur oak, linden  
WR = Woodland River bottom with swamp white oak, etc.  
wc = Woodland Conifers planted  
wh = Woodland Hardwoods planted  
SF = Stream - Flowing  
# = Number sign followed by a number designating any item not shown above

\* NOTE: Capital Letters above indicate unplanted native vegetation and natural streams.

### MANAGEMENT PRACTICE CODES

#Pk = Parking - maintain  
#Ar = Access Road - maintain  
#pk = Parking - build  
#pkt = Parking and Turnaround - build  
#pd = Pond - build  
#wt = Wetland - build  
plaid = Developed park area, includes turf & roads  
black = Food plots  
heavy polkadot = Plant native trees  
polkadot = Plant prairie  
light polkadot = Prescribe burn area  
3x = Firebreak line

CERTIFICATE OF AUTHORITY

I, Junie Gookin, hereby certify that I am the Administrative Secretary, Iowa Department of Natural Resources, State of Iowa, described in and which executed the foregoing agreement with the United States of America; that said Iowa Department of Natural Resources, State of Iowa, is organized under the laws of the State of Iowa; that Larry J. Wilson, who executed said agreement as Director of said Iowa Department of Natural Resources, State of Iowa, was then Director of said Iowa Department of Natural Resources, State of Iowa, and has been duly authorized to execute said instrument on behalf of said Iowa Department of Natural Resources, State of Iowa; that I know the signature of said Larry J. Wilson, and that the signature affixed to subject instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand this 22 day of December, 1998.

SEAL

By: Junie Gookin

## ACKNOWLEDGMENT

STATE OF MISSOURI)  
 ) ss  
COUNTY OF JACKSON)

BEFORE ME, a Notary Public in and for Jackson County, personally appeared Mr. Charles B. Barton, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

GIVEN under my hand and seal, this 14<sup>th</sup> day of January, 1998.

William A. Rogers  
NOTARY PUBLIC

(Seal)

My commission expires on the 18<sup>th</sup> day of July, 1999.

MARILYN C. ROGERS  
NOTARY PUBLIC STATE OF MISSOURI  
COUNTY OF CLAY  
MY COMMISSION EXPIRES JULY 18, 1999

**EXHIBIT F**  
**REGULATIONS**

Department of Defense (32 CFR Part 300) issued as Department of Defense  
Directives 5500.11 and 1020.1 and Army Regulation 600-7

Personnel—General

**Nondiscrimination  
on the Basis of  
Handicap in  
Programs and  
Activities  
Assisted or  
Conducted by  
the Department  
of the Army**

Headquarters  
Department of the Army  
Washington, DC  
15 November 1983

**Unclassified**

# ***SUMMARY of CHANGE***

AR 600-7

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.



Effective 15 December 1983

Personnel—General

## Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR  
General, United States Army  
Chief of Staff

Official:

ROBERT M. JOYCE  
Major General, United States Army  
The Adjutant General

**History.** This UPDATE issue is a reprint of the original form of this regulation that was published on 15 November 1983. Since that time, no changes have been issued to amend the original.

**Summary.** This regulation implements DOD Directive 1020.1. It defines policies and procedures for implementing the Army's

nondiscrimination programs and their command responsibilities; it also covers complaint, findings, compliance, sanctions, and hearings involved in discriminatory practices.

### Applicability.

a. This regulation applies to Active Army and US Army Reserve units that are disbursing Federal financial assistance to, and conducting, programs and activities that affect handicapped persons in the United States and that are covered by this regulation.

b. This regulation also applies to recipients of Federal financial assistance disbursed by DA and to programs and activities that receive or benefit from this assistance, insofar as these recipients, programs, or activities affect handicapped persons in the United States.

c. This regulation does not apply to the Army National Guard.

**Proponent and exception authority.**  
Not applicable

**Impact on the New Manning System.**

This regulation does not contain information that affects the New Manning System.

**Army management control process. Supplementation.** Supplementation of this regulation is prohibited unless prior approval is obtained from ASA(MRA), SAMR, WASH DC 20310.

**Interim changes.** Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

**Suggested improvements.** The proponent agency of this regulation is the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (SAMR-SFREA), WASH DC 20310.

**Distribution.** To be distributed in accordance with Special List.

### Contents (Listed by paragraph and page number)

#### Chapter 1

##### Introduction, page 1

#### Section I

##### General, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Policy • 1-4, page 1

#### Section II

##### Responsibilities, page 1

Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)) • 1-5, page 1

Deputy for Civilian Personnel Policy and Equal Opportunity (DCPP&EO), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) • 1-6, page 1

Heads of Army Installations and activities • 1-7, page 1

Equal employment opportunity (EEO) officers • 1-8, page 1

#### Chapter 2

##### Discriminatory Practices, page 1

#### Section I

##### Types of Programs and Activities Subject to This Regulation, page 1

General coverage • 2-1, page 1

Federal programs • 2-2, page 1

Programs and activities that affect handicapped persons • 2-3, page 2

#### Section II

##### Guidelines for Determining Discriminatory Practices, page 2

General prohibitions against discrimination • 2-4, page 2

Prohibitions against employment discrimination by recipients • 2-5, page 3

#### Chapter 3

##### Program Accessibility, page 3

#### Section I

##### Accessibility, page 3

General requirements • 3-1, page 3

Existing facilities • 3-2, page 3

New construction • 3-3, page 3

Reasonable accommodation • 3-4, page 3

#### Section II

##### Specific Accessibility, page 4

Historic properties • 3-5, page 4

## Contents—Continued

Military museums • 3-6, *page 4*

### Chapter 4

#### Complaints and Findings, *page 5*

##### Section I

*Complaints, page 5*

Introduction • 4-1, *page 5*

Filing a complaint • 4-2, *page 5*

Investigating a complaint • 4-3, *page 5*

Information requirements • 4-4, *page 6*

##### Section II

*Findings, page 6*

Written notification of findings • 4-5, *page 6*

Finding of alleged discrimination or noncompliance • 4-6, *page 6*

Finding of no discrimination • 4-7, *page 6*

Appeal of finding • 4-8, *page 6*

### Chapter 5

#### Assurances, *page 7*

Required assurances • 5-1, *page 7*

Self-evaluation and consultation with interested persons and organizations • 5-2, *page 7*

Dissemination of information • 5-3, *page 7*

Staff responsibilities • 5-4, *page 7*

Access to records and facilities • 5-5, *page 7*

### Chapter 6

#### Compliance, *page 8*

##### Section I

*Compliance Reviews, page 8*

General • 6-1, *page 8*

Desk audit application review • 6-2, *page 8*

Preapproval on-site reviews • 6-3, *page 8*

Postapproval reviews • 6-4, *page 8*

Extensions • 6-5, *page 8*

##### Section II

*Effective Compliance, page 8*

Violations • 6-6, *page 8*

Written notice of violation • 6-7, *page 8*

Attempting to achieve voluntary compliance by recipients • 6-8, *page 8*

### Chapter 7

#### Imposing Sanctions, *page 9*

Sanctions available • 7-1, *page 9*

Terminating, suspending, or refusing to grant or continue assistance • 7-2, *page 9*

Other sanctions • 7-3, *page 9*

### Chapter 8

#### Hearings, Decisions, and Notices, *page 9*

##### Section I

*Hearings, page 9*

Reasonable notice • 8-1, *page 9*

Time and place of hearing • 8-2, *page 9*

Hearing examiner • 8-3, *page 9*

Right to counsel • 8-4, *page 9*

Procedures • 8-5, *page 9*

Consolidated or joint hearings • 8-6, *page 10*

##### Section II

*Decisions and Notices, page 10*

Decision by a person other than the responsible DA official • 8-7, *page 10*

Decisions on records or review by the responsible DA official • 8-8, *page 10*

Decisions on record when a hearing is waived • 8-9, *page 10*

Rulings required • 8-10, *page 10*

Approval by the Secretary of Defense • 8-11, *page 10*

### Chapter 9

#### Restoring Eligibility for Financial Assistance, *page 10*

Adverse affect • 9-1, *page 10*

Restoration of eligibility • 9-2, *page 10*

Denial of eligibility • 9-3, *page 10*

### Chapter 10

#### Coordination with Sections 502 and 503 of the

#### Rehabilitation Act of 1973 (As Amended), *page 10*

Developing accessibility • 10-1, *page 10*

Direct consultation • 10-2, *page 11*

Coordination of enforcement actions • 10-3, *page 11*

Section 503 • 10-4, *page 11*

Employment • 10-5, *page 11*

**Appendix A.** Format for Assurance of Compliance with the Department of the Army Under Section 504 of the Rehabilitation Act of 1973 (As Amended), *page 12*

## Glossary

## Chapter 1 Introduction

### Section I General

#### 1-1. Purpose

This regulation prescribes policy and procedures for prohibiting discrimination based on handicap in Department of the Army (DA) programs and activities that are—

- a. Receiving Federal financial assistance disbursed by DA.
- b. Conducted by DA.

#### 1-2. References

- a. Required publications are listed below.

(1) Title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800) (Protection of Historic and Cultural Properties). Cited in paragraph 3-5e.

(2) DODD 1020.1 (Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense). Cited in the summary statement.

(3) DOD 4270.1-M (Construction Criteria Manual). Cited in paragraph 10-1.

(4) Manual EM 1110-1-103 (Office of the Chief of Engineers) (Design for the Physically Handicapped). Cited in paragraphs 3-2a(1), 3-3, and 10-1. This publication is available from the Office of the Chief of Engineers Publications Depot, 890 South Picket St., ALEX VA 22304; (703) 274-7771.

(5) AR 600-23 (Nondiscrimination in Federally Assisted Programs). Cited in paragraph 6-1b.

- b. Related publications are listed below. (A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.)

(1) DODI 5000.22 (Guide to Estimating Reporting Costs).

(2) Public Law 93-112, section 504 (Rehabilitation Act of 1973), September 26, 1973 (sec 794, title 29, United States Code) (1976).

(3) Public Law 93-516, section 111 (Rehabilitation Act Amendments of 1974), December 7, 1974 (sec 706, 780, and 790, title 29, United States Code) (1976).

(4) Public Law 95-602, section 119 (Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978), November 6, 1978 (sec 794, title 29, United States Code) (Supp III, 1979).

(5) Title 28, Code of Federal Regulations, part 41 (28 CFR 41) (Department of Justice Regulation "Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs", August 11, 1981).

(6) Chapter 35, title 44, United States Code (44 USC 35) (Coordination of Federal Reporting Services).

#### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

#### 1-4. Policy

The Army's policy is that no qualified handicapped person will be subjected to discrimination on the basis of handicap in any program or activity that receives or benefits from Federal financial assistance disbursed by DA. (Guidelines for determining actions that discriminate against handicapped persons in the United States are discussed in chap 2, sec II.)

### Section II Responsibilities

#### 1-5. Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA))

The ASA(M&RA) or designee has overall DA responsibility to monitor compliance with this regulation. The ASA(M&RA) or designee will—

- a. Coordinate efforts Army-wide to enforce provisions of this regulation.

b. Assist in developing standards and procedures set forth in chapter 2, section I, and chapters 4 and 5.

- c. Assist in Army-wide efforts in implementing this regulation.

#### 1-6. Deputy for Civilian Personnel Policy and Equal Opportunity (DCPP&EO), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)

The DCPP&EO will—

- a. Ensure compliance with this regulation.

b. Receive and investigate complaints filed under this regulation.

- c. Otherwise manage Army-wide responsibilities under this regulation, through direction from the Office of the ASA(M&RA).

#### 1-7. Heads of Army Installations and activities

Heads of Army installations and activities will—

a. Cooperate fully with the ASA(M&RA) or designee in carrying out responsibilities prescribed by this regulation. This cooperation will include timely furnishing to the ASA(M&RA) or designee of required reports and information.

b. Assign sufficient personnel to implement and insure effective enforcement of provisions of this regulation.

- c. Ensure that provisions of this regulation are carried out.

#### 1-8. Equal employment opportunity (EEO) officers

EEO officers will—

a. Act as advisors to commanders of installations and activities to which they are assigned.

b. Submit reports described in chapter 4 (paras 4-2d, 4-4b, and 4-6c specifically).

## Chapter 2 Discriminatory Practices

### Section I

#### Types of Programs and Activities Subject to This Regulation

##### 2-1. General coverage

Existing programs and activities that are assisted or conducted Army-wide and that are subject to this regulation (but do not appear in paras 2-2 and 2-3) are covered; even though they are not listed. Activities must report new programs and activities that are subject to this regulation to the ASA(M&RA) or designee within 15 calendar days of their creation or funding.

##### 2-2. Federal programs

Federal financial assistance programs subject to this regulation and their enabling legislation, are listed below.

a. Various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property (sec 483, 484, and 512, title 40, United States Code (1976); sec 1101 and 1107, title 49, United States Code (1976); sec 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547, title 10, United States Code (1976 and supp IV 1980)).

b. National Program for the Promotion of Rifle Practice (sec 4307-4311, title 10, United States Code (1976) and the annual Appropriations Act).

c. Federal grants and cooperative agreements (sec 501-509, title 41, United States Code (supp III 1979)).

d. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (sec 426, title 33, United States Code (1976) and supp III 1979).

e. Army Corps of Engineers assistance in construction of works for restoration and protection of shores (sec 426e-h, title 33, United States Code (1976)).

f. Construction and operation of public park and recreational facilities in water resource development projects under DA administrative jurisdiction (sec 460d, title 16, United States Code (1976)).

g. Payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes (sec 701c-3, title 33, United States Code (1976)).

h. Grants of easements without consideration, or at nominal or reduced consideration, on land under DA control at water resource development projects (sec 558c and 702d-1, title 33, United States Code (1976); sec 2668 and 2699, title 10, United States Code (1976); sec 961, title 43, United States Code (1976); and sec 319, title 40, United States Code (1976)).

i. Army Corps of Engineers assistance in construction of small boat-harbor projects (sec 540 and 577, title 33, United States Code (1976)).

j. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (sec 701s, title 33, United States Code (1976)).

k. Army Corps of Engineers contracts for protection, alteration, reconstruction, relocation, or placement of structures facilities (sec 633, title 33, United States Code (1976)).

l. Provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for control of aquatic plant growths in rivers, harbors, and allied waters (sec 610, title 33, United States Code (1976)).

m. Provision of specialized services by the Army Corps of Engineers to any State for preparation of comprehensive plans for drainage basins located within the boundaries of said State (sec 1962d-16, title 42, United States Code (1976)).

n. Provision of specialized services by the Army Corps of Engineers to improve channels for navigation (sec 603a, title 33, United States Code (1976)).

o. Research grants and contracts with nonprofit institutions of higher education using equipment purchased under Public Law 85-934 (title 42, United States Code (1892)).

p. Provision of specialized service by the Army Corps of Engineers to reduce flood damage (sec 701g, title 33, United States Code (1976)).

q. US Soldiers' and Airmen's Home (sec 44c and 47, title 24, United States Code (1976)).

### **2-3. Programs and activities that affect handicapped persons**

All programs and activities conducted by DA that affect handicapped persons in the United States are subject to this regulation. These programs and activities are included as listed below.

a. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment; an example is making cassette recordings of proposed rules.

b. Public meetings, conferences, or seminars sponsored or conducted by DA, but held in non-Governmental buildings.

c. Public meetings, conferences, or seminars sponsored or conducted by DA or a non-DA organization, but held in a DA building.

d. Open houses, memorial services, tours, or other ceremonies held on or in DA property.

e. Historic vessels.

f. Historic buildings and properties maintained by a DA activity; properties designated as historic under a statute of the appropriate State or local governmental body. (See glossary for explanation of the term historic property.)

g. Schools operated by DA within the United States (pursuant to sec 6 of Public Law 81-874 and sec 241, title 20, United States Code (1976)).

h. Donation of surplus or obsolete Army uniforms and combat items to the following:

(1) Veterans' organizations.

(2) Soldiers monument associations.

(3) Museums. (See paras 3-5 and 3-6.)

(4) Incorporated municipalities.

i. Programs and activities conducted by DA and recipients that are not included in this chapter will be held accountable for provisions in this regulation.

## **Section II**

### **Guidelines for Determining Discriminatory Practices**

#### **2-4. General prohibitions against discrimination**

a. No qualified handicapped person will, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by DA or that receives or benefits from Federal financial assistance disbursed by DA.

b. A recipient or DA component may not—

(1) Directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(a) Provide different or separate aid, benefits, or services to handicapped persons than provided to others; an exception would be unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others.

(b) Deny a qualified handicapped person the opportunity to take part in or benefit from the aid, benefit, or service.

(c) Afford a qualified handicapped person an opportunity to take part in or benefit from the aid, benefit, or service that is not equal to that afforded others.

(d) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others.

(e) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

(2) Deny a qualified handicapped person the opportunity to take part in programs or activities that are not separate or different from regular programs or activities; this will be true even if such separate or different programs and activities are permissible under (1)(a) above.

(3) Provide assistance to an agency, organization, or person that discriminates on the basis of handicap in providing aid, benefit, or service to beneficiaries of the recipient's program or activity.

(4) Deny, on the basis of handicap, a qualified handicapped person the opportunity to take part as a member of planning or advisory boards.

(5) Use, directly or through contractual or other arrangements, criteria or methods of administration that—

(a) Subject qualified handicapped persons to discrimination on the basis of handicap.

(b) Defeat or substantially impair accomplishment of the objectives of the recipient's or DA component's program or activity with respect to handicapped persons.

(c) Perpetuate discrimination by another recipient if both recipients are subject to common administrative control, or are agencies of the same State.

c. In determining the site or location of a facility, a recipient or DA component may not make selections that—

(1) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance.

(2) Defeat or substantially impair, with respect to handicapped persons, the accomplishment of objectives of the program or activity.

d. Recipients and DA components will—

(1) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(2) Take appropriate steps to—

(a) Make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

(b) Ensure that no handicapped individual is denied the benefits of, excluded from taking part in, or otherwise subjected to discrimination because of the absence of auxiliary aids. Examples of these

aids are as follows: certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

e. This section may not be interpreted to prohibit exclusion of the following:

(1) Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or executive order to handicapped persons.

(2) One class of handicapped persons from a program or activity limited by Federal statute or executive order to a different class of handicapped persons.

## **2-5. Prohibitions against employment discrimination by recipients**

Prohibition against discrimination in employment applies to the following:

a. Recruitment, advertising, and processing of applications for employment.

b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

c. Rates of pay or any other form of compensation, and changes in compensation.

d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

e. Leaves of absence, sick leave, or any other leave.

f. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

g. Selection and financial support for training; these criteria include apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training.

h. Programs and activities sponsored by the employer; these include social and recreational programs.

i. Any other term, condition, or privilege of employment.

## **Chapter 3 Program Accessibility**

### **Section 1 Accessibility**

#### **3-1. General requirements**

Because the facilities of a recipient or DA component are inaccessible to or not usable by handicapped persons, no qualified handicapped person will be denied the benefits of, or be excluded from taking part in, or be subjected otherwise to discrimination under any program or activity—

a. That receives or benefits from Federal assistance disbursed by DA.

b. Conducted by DA.

#### **3-2. Existing facilities**

a. A recipient or DA component will operate programs or activities so that they are readily accessible to, and usable by, handicapped persons. However, this does not necessarily require a recipient or DA component to make each of its existing facilities or every part usable by handicapped persons.

(1) Guidance in determining accessibility of facilities is discussed in Office of the Chief of Engineers Manual EM 1110-1-103.

(2) Inquires on specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

b. Structural changes necessary to make programs or activities in existing facilities accessible to the extent required by paragraph 3-1 will be made as discussed below.

(1) Such changes will be made as soon as practicable, but no later than 2 years after the effective date of this regulation. However, DA components concerned may extend this period of time if the following conditions apply:

(a) The program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities.

(b) Other accessible modes of transportation are available.

*Note.* This extension will be for a reasonable and definite period; this period will be determined after consultation with the ASA(M&RA) or designee.

(2) The recipient or DA component will develop a transition plan containing steps necessary to complete the changes. This plan will be developed—

(a) With the assistance of interested persons or organizations.

(b) Within a period of time to be established in each DA component's guidelines.

(3) The recipient or DA component will make a copy of the transition plan available for public inspection. At a minimum, the plan will include the information listed below.

(a) Identity of physical obstacles in the facilities that limit accessibility to handicapped persons.

(b) Description in detail of the methods that will be used to make the facilities accessible.

(c) Specific schedule for taking steps necessary to achieve full accessibility; if the time period is longer than 1 year, steps will be identified that will be taken during each year of the transition period.

(d) Indication of the person responsible for implementing the transition plan; this indication will include last name, first name, and middle initial.

c. A recipient or DA component may comply with paragraph 3-2 through the means listed below.

(1) Acquisition or redesign of equipment, such as TDDs or other telephonic devices for the deaf.

(2) Relocation of classes or other services to accessible buildings.

(3) Assignment of aides to beneficiaries, such as—

(a) Readers.

(b) Certified sign-language interpreters.

(c) Home visits.

(d) Delivery of health, welfare, or other services at accessible alternative sites.

(4) Alterations of existing facilities and construction of new facilities, under this subsection and paragraph 3-3.

(5) Other methods that make the program or activity accessible to handicapped persons.

d. A recipient or DA component is not required to make structural changes in existing facilities when other methods are available to achieve compliance with this section.

e. In choosing among alternatives for meeting the requirements of this section, a recipient or DA component will give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

#### **3-3. New construction**

New facilities and alterations to existing facilities will be designed and constructed to be accessible and usable by handicapped persons. (See Office of the Chief of Engineers Manual EM 1110-1-103.) Inquiries about specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

#### **3-4. Reasonable accommodation**

a. A recipient or DA component will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. An exception is if the recipient or DA component demonstrates to the ASA(MRA) or designee that the accommodation would impose an undue hardship on operation of the program.

b. "Reasonable accommodation" includes the following:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons.

(2) Job restructuring.

(3) Part-time or modified work schedules.

(4) Acquisition or modification of equipment or devices, such as TDDs or other telephonic instruments.

(5) Provision of readers or certified sign-language interpreters.

c. In determining whether an accommodation would impose an undue hardship on operation of a recipient's or DA component's program, the ASA(MRA) or designee will consider the following factors, at a minimum:

(1) Overall size of the recipient's or DA component's installation or activity's program or activity; examples are number of employees, number and type of facilities, and size of budget.

(2) Size of the recipient's or DA installation or activity's operations; "operation" here will include composition and structure of the recipient's or DA component's installation or activity work force.

(3) Nature and cost of accommodation needed.

d. A recipient or DA component installation or activity may not deny employment opportunity to a qualified handicapped employee or applicant for employment; this is true if the basis for the denial is the need to make reasonable accommodation to physical or mental limitations of the employee or applicant.

## Section II

### Specific Accessibility

#### 3-5. Historic properties

a. In the case of historic properties, program accessibility will mean that, when viewed in their entirety programs are usable by handicapped persons. (See the glossary for explanation of the term historic property.) Because the primary benefit of historic properties is the experience of the property itself, priority will be given to those methods of achieving program accessibility that make the historic property physically accessible to handicapped persons.

b. Methods of achieving program accessibility to otherwise inaccessible areas or features of historic properties include the following:

(1) Making physical alterations that give handicapped persons access.

(2) Using audiovisual materials and devices.

(3) Assigning individuals to guide handicapped persons.

(4) Adopting other innovative methods.

c. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, modification or waiver of access standards may be sought from the ASA(M&RA) or designee.

(1) A decision to grant a modification or waiver will be based on consideration of the following:

(a) Scale of the property, reflecting its ability to absorb alterations.

(b) Use of the property, whether primarily for public or private purposes.

(c) Importance of historic features of the property to conducting the program.

(d) Costs of alterations, compared to the increase in accessibility.

(2) The ASA(M&RA) or designee—

(a) Periodically will review waivers granted under this paragraph.

(b) May withdraw waivers if technological advances or changes warrant.

d. The decision by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) or designee to grant a modification or waiver of access standards is subject to section 106 of the National Historic Preservation Act (PL 89-665), as amended. Section 106 reads as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation

established under title II of this Act a reasonable opportunity to comment with regard to such undertaking."

e. The decision cited in *d* above will be based on title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800). When the property is federally owned, or when Federal funds may be used for alterations, the ASA(M&RA) or designee will obtain comments (as cited in sec 106 quoted in *d* above) under 36 CFR 800 before effecting structural alterations.

#### 3-6. Military museums

a. When military museums are involved, program accessibility will mean that the following are accessible and usable by handicapped persons:

(1) Exhibits.

(2) Displays.

(3) Tours.

(4) Lectures.

(5) Circulating or traveling exhibits.

(6) Other programs.

b. Methods of making museum programs accessible are discussed below. Commanders of DA installations and activities are encouraged to use "Museum and Handicapped Students: Guidelines for Educators." This is published by the National Air and Space Museum, Smithsonian Institution, WASH DC 20560; it is available through that address.

(1) Deaf and hearing-impaired persons, by—

(a) Training museum staff in sign-language.

(b) Providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors.

(c) Insuring that clear, concise language is used on all museum signs and display labels.

(d) Providing amplification devices.

(e) Providing printed scripts for films, videotapes, lectures, and tours.

(2) Blind and visually impaired persons, by—

(a) Providing museum catalogs in large-print editions printed over braille.

(b) Providing cassette tapes, records, or discs for museum tours or exhibits.

(c) Providing readers to accompany blind or visually impaired visitors.

(d) Using large-print and braille display cards at exhibits.

(e) Providing raised-line maps of museum buildings.

(f) Using raised-line drawings, reproductions, or models of large exhibits for tactile experiences, when touching of exhibits is prohibited.

(g) Placing large-print and braille signs to identify galleries, elevators, restrooms, and other service areas.

(h) Permitting guide dogs in all museum facilities.

(3) Other physically impaired persons, by—

(a) Lowering display cases.

(b) Spacing exhibits to make movement easier.

(c) Using ramps in galleries.

(d) Increasing lighting in exhibit areas, to ease viewing from a distance.

(e) Providing places to sit in exhibit areas.

(f) Making restrooms accessible.

(g) Using large-print exhibit display cards to ease reading from a distance.

(h) Sensitizing museum staff members to consider the needs of handicapped visitors when organizing exhibits.

c. Recipients may not take part in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by this section. These include relationships with—

(1) Employment and referral agencies.

(2) Labor unions.

(3) Organizations providing or administering fringe benefits to employees of the recipient.

(4) Organizations providing training and apprenticeship programs.

d. Recipients will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee; an exception is if the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program. "Reasonable accommodation" here includes, but is not limited to, providing—

- (1) Ramps.
- (2) Accessible restrooms and drinking fountains.
- (3) Interpreters for deaf employees.
- (4) Readers for blind employees.
- (5) Amplified telephones.
- (6) TDDs such as teletypewriters (TTYs) or telephone writers.
- (7) Tactile signs on elevators.

e. Recipients—

(1) May not use employment tests or criteria that discriminate against handicapped persons.

(2) Will insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(3) May not conduct a preemployment medical examination or make a preemployment inquiry about—

(a) Whether an applicant is a handicapped person.

(b) The nature or severity of a handicap.

(4) May make, however, a preemployment inquiry into an applicant's ability to perform job-related functions.

f. Recipients may invite applicants for employment to indicate whether and to what extent they are handicapped, when the recipient is taking—

(1) Remedial action to correct effects of past discrimination.

(2) Voluntary action to overcome effects of conditions that have resulted in limited participation by handicapped persons.

g. Material in f above pertains only if the recipient makes clear to the applicants that—

(1) The information is intended for use solely in connection with the recipient's—

(a) Remedial action obligations.

(b) Voluntary affirmative action efforts.

(2) The information—

(a) Is being requested on a voluntary basis.

(b) Will be kept confidential (as provided in i below).

(c) Will not subject the applicants to any adverse treatment, if refused.

(d) Will be used only under this regulation.

h. Nothing in this section will prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty, if—

(1) All entering employees are subjected to such an examination, regardless of handicap.

(2) The results of such an examination are used only under this regulation.

i. Information obtained under this section concerning medical condition or history of applicants will be collected and maintained on separate forms; these forms will be collected and maintained on separate forms; these forms will be accorded confidentiality as medical records, with the following exceptions:

(1) Supervisors and managers may be informed about—

(a) Restrictions on work or duties of handicapped persons.

(b) Necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

(3) Government officials investigating compliance with this regulation will be provided relevant information on request.

## Chapter 4 Complaints and Findings

### Section I Complaints

#### 4-1. Introduction

a. The system for processing complaints outlined in this chapter covers complainants, recipients (grantees), and members of the general public. Because of handicaps, these persons are precluded from taking part in or attending certain programs, or gaining access to federally owned or leased buildings, Army posts, camps, or stations, because of architectural design or other barriers.

b. Complaints will be received by the Equal Employment Opportunity (EEO) officer at the location where the alleged discriminatory incident occurred, if it occurs on a military installation. Complainants also may choose to file their complaint directly with the ASD(MRA&L). (See para 4-2c.)

c. If a recipient is alleged to have contributed to a discriminatory practice, the complainant may file a written complaint with the EEO officer assigned to the installation or activity funding the program or project. DA components also receive funds for or provide programs or projects for public consumption. Therefore, they are required to display posters or other conspicuous notices to inform attendees or participants of their rights to file complaints of discrimination based on handicap, in connection with programs or projects conducted by DA.

#### 4-2. Filing a complaint

a. A person who feels that he or she, or any group or class of persons, has been discriminated against on the basis of handicap can individually or through a representative file a complaint of discrimination within 60 calendar days of the alleged discriminatory incident. The EEO officer will have the authority to reject the complaint if it is not received in the EEO office within 60 days.

b. The complaint must be—

(1) Filed in writing.

(2) Signed by the complainant or the complainant's authorized representative.

(3) Submitted to the EEO officer having operating or servicing responsibility at the site or location where the alleged discriminatory incident occurred.

c. Complaints may be filed directly with the ASD(MRA&L) if the—

(1) Incident occurred on an Army post, camp, or station.

(2) Program or project was conducted by DA.

d. A copy of each complaint received by a local servicing EEO officer or designee will be forwarded by the EEO officer to HQDA(SAMR-OEPGR), WASH DC 20310 and ASD(MRA&L EO/SP), WASH DC 20310 within 10 calendar days after receipt. This reporting requirement has been assigned OMB No. 0704-0162.

e. The complaint must indicate how and by whom the complainant was discriminated against. The case will be closed after 30 days if the complainant does not provide the information listed below.

(1) When the discriminatory incident occurred.

(2) Name, address, telephone number, and other pertinent data about the complainant.

(3) Full description of what actually transpired.

(4) Specific request to have the incident investigated.

(5) What the complainant views as proper corrective action to alleviate future occurrences.

#### 4-3. Investigating a complaint

a. Thirty calendar days will be allowed for investigation by any of the following:

(1) The local servicing EEO officer.

(2) The person designated by the local servicing EEO officer to conduct the investigation.

(3) The individual designated at the ASD(MRA&L) level.

b. Investigations by recipients will be conducted under the following procedures:

(1) Commander of a DA installation or activity may require or permit recipients to investigate complaints alleging violation of this regulation by—

(a) Insuring that the recipient investigates the complaints under standards, procedures, and requirements prescribed by this regulation.

(b) Requiring the recipient to submit a written report of each complaint and investigation to the DA installation or activity.

(c) Retaining a review responsibility over the investigation and disposition of each complaint.

(d) Ensuring that each complaint investigation is completed within 180 calendar days of receipt of the complaint by the proper DA installation or activity; an exception is an extension of time granted for good cause by the ASA(M&RA) or designee.

(e) Requiring the recipient to maintain a log of all complaints filed against the recipient.

(2) DA installations or activities that require or permit complaint investigations to be conducted by recipients will review recipient complaint investigations under this regulation.

c. A case file will be—

(1) Established for each complaint filed.

(2) Kept by the EEO officer for 3 years.

d. The complaint will be acknowledged within 10 calendar days of receipt by the EEO officer. Should the EEO officer determine that a complaint will be investigated, the following will be forwarded to the person designated to conducting the investigation (if other than the EEO officer):

(1) Copy of the letter of acknowledgment.

(2) Other relevant information.

e. The local EEO officer or the person designated at the ASD (MRA&L) level has the ultimate responsibility to assure that the person designated to investigate the alleged discriminatory incident obtains information, documentation, and statements necessary to investigate the complaint properly and adequately.

f. The investigative process will be completed within 30 calendar days after acknowledging receipt of complaint. A finding will be rendered by the commander or designee within 10 calendar days after the close of the investigation. The commander or designee can accept, reject, or modify the finding.

g. Withdrawal of complaint should be accepted only when the letter of withdrawal contains clear information suggesting that the complainant made the decision to withdraw on his or her own volition, without undue influence from the agency or recipient.

#### 4-4. Information requirements

a. Installation EEO officers will maintain a log of all complaints filed with the EEO office. They also will notify (telephonically or by mail) the major Army command (MACOM) EEO office to assure that a simultaneous log is maintained. The log should include—

(1) Name and address of the complainant.

(2) Recipient's name and address (if applicable).

(3) Basis for the complaint.

(4) Current status.

b. MACOM EEO officers will submit the following reports to HQDA(SAMR-CPP&EO), Room 1E615, The Pentagon, WASH DC 20310 by 20 December and 20 June:

(1) A narrative summary report on complaints. This reporting requirement has been assigned RCS DD-M(SA) 1596.

(2) An Estimating Cost Report (DODI 5000.22).

## Section II Findings

#### 4-5. Written notification of findings

a. The complainant will receive written notification outlining the finding from the installation commander or the EEO officer within 14 calendar days after the 30th day or close of investigation, whichever comes first.

b. This notification must indicate whether or not discrimination

or other violation occurred. If no discrimination is found, the complainant will be—

(1) Notified in writing.

(2) Informed of avenues of redress.

#### 4-6. Finding of alleged discrimination or noncompliance

a. With a finding of discrimination, the EEO officer will recommend corrective action to the installation commander concerned or to the recipient.

b. When the investigation reveals that discrimination or a violation of this regulation has occurred, the EEO officer will issue a written notification outlining—

(1) The violation.

(2) Recommended corrective action.

(3) Suspense date for completion of corrective action.

c. Written notification and recommended corrective action will be forwarded to the commander or recipient (if applicable) within 14 calendar days after completion of the investigation; copies will be sent to HQDA (SAMR-OEPGR), WASH DC 20310 and the complainant. Also, each DA installation or activity commander will submit a narrative report by memorandum to the ASD(MRA&L) or designee when the DA installation or activity commander notifies an applicant or recipient that noncompliance with this regulation is indicated. The report, which has been assigned RCS DD-M(AR) 1597, will include the following information:

(1) Recipient's name (last name, first, and middle initial), if this refers to a person.

(2) Address (street address, city, state, and ZIP Code).

(3) The date (year, month, day).

(4) Nature of the finding.

(5) Name of the applicable federally assisted program or activity.

#### 4-7. Finding of no discrimination

If the investigation reveals no discrimination or violation of this regulation, written notification will be forwarded within 14 calendar days after completion of the investigation to the following:

a. Installation commander.

b. Recipient.

c. Complainant.

d. HQDA(SAMR-OEPGR), WASH DC 20310.

#### 4-8. Appeal of finding

a. If a complainant is dissatisfied with a local finding, he or she may appeal to HQDA(SAMR-OEPGR), WASH DC 20310 within 30 calendar days of receipt of the written notification that—

(1) Sets forth the finding.

(2) Informs the complainant of the right to further appeal.

b. The appeal to HQDA is—

(1) Automatic, if the complainant is dissatisfied with the local finding.

(2) Not constrained by any criteria other than time.

c. If the complainant is further dissatisfied with the HQDA decision, he or she may appeal to the ASD(MRA&L) (ATTN: Office, Deputy Assistant Secretary of Defense (EO/SP)), Room 3E314, The Pentagon, WASH DC 20310. An appeal to ASD(MRA&L) must be based on one of the following three reasons:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves—

(a) An erroneous interpretation of law or regulation.

(b) A misapplication of established policy.

(3) The previous decision is of—

(a) A precedential nature involving new or unreviewed policy considerations that may have an affect beyond the actual case at hand.

(b) Such an exceptional nature as to merit the personal attention of the ASD(MRA&L).

d. If the complainant is still dissatisfied with the finding or decision after the administrative process has been exhausted, he or she may file a civil action in a US District Court.

e. An extension of the time limit for filing may be granted by the



EEO officer or appropriate ASD that he or she was prevented from the timely filing of an appeal for the following reasons:

- (1) Not notified of the time limit.
- (2) Experienced circumstances beyond his or her control.

f. If a complainant files a timely complaint for appeal, but no decision is rendered by the DCP&EO within 180 calendar days, the complainant may file a civil action in a US District Court. This civil action may be filed without going through the administrative process.

## **Chapter 5**

### **Assurances**

#### **5-1. Required assurances**

a. All recipients will file written assurances in their programs or activities will be conducted under this regulation. Recipients who are now receiving assistance from DA will have 6 months from the date of publication of this regulation to fill out and return the assurance form. New recipients must sign the assurance form prior to receiving assistance. The sample format is at appendix A. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DA installation or activity commander will attempt to gain compliance under paragraphs 5-3, 5-4, and 5-5; this will hold true provided installation or activity commanders will continue the assistance, while proceedings required by paragraphs 6-6, 6-7, and 6-8, and chapters 7, 8, and 9 are pending.

b. The DA installation or activity commander will—

(1) Advise each recipient of the—

(a) Required elements of the assurance.

(b) Extent to which those receiving assistance from the recipients will be required to execute similar assurances, with respect to each program or activity.

(2) Ensure that each assurance does the following:

(a) Obligates the recipient to advise the DA installation or activity commander of receipt of complaints that allege discrimination against handicapped persons.

(b) Obligates the recipient to collect and provide items of information that the DA installation or activity commander requires.

(c) Is made applicable to any Federal financial assistance that might be disbursed by a DA installation or activity without submission of a new application.

(d) Obligates the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement, or possessed by the recipient.

(e) Includes a provision recognizing that the US Government has the right to seek judicial enforcement of section 504 of the Rehabilitation Act of 1973 (as amended) and this regulation.

#### **5-2. Self-evaluation and consultation with interested persons and organizations**

a. Commanders of DA installations or activities will require recipients to conduct a self-evaluation with the assistance of interested persons; these interested persons will include handicapped persons or organizations that represent them. The self-evaluation will be conducted within 6 months of either of the following:

(1) The effective date of this regulation.

(2) First receiving Federal financial assistance disbursed by DA. When appropriate, commanders of DA installations or activities also will require recipients to consult at least annually with these interested persons.

b. In conducting the self-evaluation, each recipient will—

(1) Evaluate effects of policies and practices for compliance with—

(a) This regulation.

(b) Applicable supplementary guidelines.

(2) Modify policies that do not meet the requirements in (1) above.

(3) Take appropriate remedial steps to eliminate discriminatory effects of policies or practices.

c. For at least 3 years after the completion of a self-evaluation required under this paragraph, recipients will maintain on file, make available for public inspection, and provide to the ASA(MRA) or designee on request the information listed below.

(1) List of the interested persons consulted (last names, first names, and middle initials).

(2) Description of areas examined and problems identified in those areas.

(3) Description of modifications made and remedial steps taken.

#### **5-3. Dissemination of information**

a. Within 90 days of the effective date of this regulation or of first receiving assistance from a DA component, and on a continuing basis thereafter, recipients will notify beneficiaries and employees of their rights under this regulation. Appropriate steps will be taken to notify participants, beneficiaries, applicants for employment, employees, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient; employees will include those with impaired vision or hearing.

b. The notification will indicate that recipient does not discriminate on the basis of handicap, in violation of this regulation. The notification will state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by—

(1) Posting notices.

(2) Publishing announcements in newspapers and magazines.

(3) Placing notices in publications.

(4) Distributing memoranda or other written communications.

c. If a recipient publishes (or uses and makes available to participants, beneficiaries, applicants for employment, or employees) recruitment materials or publications containing general information about the recipient's program and activities, this general information will include a statement of the policy described in a and b above. This may be accomplished by—

(1) Including appropriate inserts in existing materials and publications.

(2) Revising and reprinting materials and publications.

d. Materials developed under this regulation will be provided to insure that all beneficiaries and employees of the recipient understand the information.

#### **5-4. Staff responsibilities**

All DA determinations of receipt compliance with this regulation will be subject to reviews by the ASA (M&RA) or designee. When responsibility for approving applications for Federal financial assistance disbursed by DA is assigned to a DA installation or activity personnel in such offices will be designated to perform the functions described in chapters 6, 7, 8, 9, and 10.

#### **5-5. Access to records and facilities**

a. Each recipient will permit access to premises by DA officials during normal business hours; this access will be especially relevant when it is necessary for conducting on-site compliance reviews or complaint investigations. These officials will be allowed to—

(1) Photograph facilities.

(2) Inspect and copy books, records, accounts, and other material relevant to determining the recipient's compliance with this regulation.

b. Information so obtained will be used in connection with the administration of this regulation. If the recipient does not have the information requested, the recipient will—

(1) Submit to the DCP&EO a written report that contains a certification that the information is not available; the DCP&EO's address is HQDA (SAMR), Room 1E600, Pentagon, WASH DC 20310.

(2) Describe the good-faith efforts made to obtain the information.

## **Chapter 6 Compliance**

### **Section I Compliance Reviews**

#### **6-1. General**

Commanders of DA installations or activities will—

- a. Determine compliance of each recipient with this regulation.
- b. Perform, when possible, compliance reviews in conjunction with review and audit efforts implementing title VI of the Civil Rights Act of 1964. (See AR 600-23.)

#### **6-2. Desk audit application review**

Before approving an application for Federal financial assistance, DA installation and activity commanders will make written determinations of whether the recipient is in compliance with this regulation. This determination will be based on a review of assurance of compliance, executed by recipients under paragraph 5-1, and other data submitted by the recipient.

a. When a determination cannot be made from the assurance and other data, the DA installation or activity commander will—

- (1) Require the recipient to submit additional information.
- (2) Take other steps as necessary to determine the recipient's compliance with this regulation.

b. If this additional information demonstrates that the recipient is in compliance with this regulation, commanders of DA installations and activities will notify the recipient promptly that the recipient is in compliance.

#### **6-3. Preapproval on-site reviews**

a. When a desk audit application review conducted under paragraph 6-2 indicates that the recipient might not be in compliance with this regulation, the DA installation or activity commander may conduct a preapproval on-site review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The commander of the DA installation or activity will conduct such a review when appropriate, when the following conditions apply:

(1) If a desk audit application review that the recipient's compliance posture is questionable because of—

- (a) A history of discrimination complaints.
- (b) Current discrimination complaints.
- (c) A noncompliance determination by another Government agency or DA installation or activity.
- (d) Other indications of possible noncompliance.

(2) If federal financial assistance is requested for construction, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with chapter 3, section I. An exception for construction would be extraordinary circumstances.

b. Preapproval on-site reviews will be conducted under—

- (1) This regulation's guidelines.
- (2) The provisions of paragraph 6-4 concerning postapproval reviews.

#### **6-4. Postapproval reviews**

Commanders of DA installations and activities will—

a. Establish and maintain effective programs of post-approval reviews.

b. Conduct postapproval reviews of each recipient. (Frequency and nature of these reviews are prescribed in this regulation.)

c. Require recipients periodically to submit compliance reports.

d. Record the results of the reviews; these results will include findings of fact and recommendations.

#### **6-5. Extensions**

A commander of a DA installation or activity will complete a review within 180 calendar days of the recipient's initiation. An exception will be if an extension of time is granted by the ASA(M&RA) or designee for good cause. This review will do one of the following:

a. Find the recipient to be in compliance; the recipient then will be notified of this finding.

b. Notify the recipient and the ASA(M&RA) or designee of a finding of probable noncompliance under paragraph 6-7.

### **Section II Effective Compliance**

#### **6-6. Violations**

a. When a compliance review or complaint investigation indicates that a recipient has violated this regulation or the assurance executed under paragraph 5-1, the responsible DA installation or activity commander or the ASA(M&RA) or designee will attempt to effect compliance under paragraphs 6-7 and 6-8. The inability of a DA installation or activity commander to comply with any time frame prescribed in this regulation does not relieve a recipient of the responsibility for compliance with this regulation.

b. The DA installation or activity commander may require (when necessary to overcome the affects of discrimination in violation of this regulation) a recipient to take remedial action, with respect to handicapped persons who—

(1) Are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.

(2) Would have been participants in the recipient's program or activity had the discrimination not occurred.

(3) Are presently in the recipient's program or activity but not receiving full benefits or equal and integrated treatment within the program or activity.

#### **6-7. Written notice of violation**

After evaluating the investigative report, the commander of the DA installation or activity will issue to the recipient (under para 5-3) and to the ASA(M&RA) or designee a written notice that—

a. Describes the apparent violation and corrective actions necessary to achieve compliance.

b. Extends an offer to meet informally with the recipient.

c. Informs the recipient that failure to respond to the notice within 15 calendar days of its receipt will result in initiation of enforcement procedures described in chapters 8, 9, and 10.

#### **6-8. Attempting to achieve voluntary compliance by recipients**

a. If a DA installation or activity commander issues a notice under paragraph 6-7, the commander will attempt to—

(1) Meet the recipient.

(2) Persuade the recipient to take steps necessary to achieve compliance with this regulation.

b. If a recipient agrees to take remedial steps to achieve compliance, the DA installation or activity commander will require that the agreement—

(1) Be in writing.

(2) Be signed by the head of the DA installation or activity concerned or designee.

(3) Be signed by the principal official of the recipient.

(4) Specify action necessary to achieve compliance.

(5) Be made available to the public on request.

(6) Be subject to the approval of the ASA(M&RA) or designee.

c. If satisfactory adjustment, or a written agreement, has not been achieved within 60 calendar days of the recipient's receipt of the notice issued under paragraph 6-7, the DA installation or activity commander will—

(1) Notify the ASA(M&RA) or designee.

(2) State the reasons for failure to reach satisfactory adjustments, or written agreement.

d. The commander of the DA installation or activity will initiate the enforcement actions prescribed in chapters 8, 9, and 10, if one of the following applies:

(1) The recipient does not respond to a notice under paragraph 6-7, within 15 calendar days, if receipt of the notice and satisfactory adjustments are not made within 45 calendar days of the date of the recipient's response.

(2) The DA installation or activity commander or the ASA(-M&RA) determines at any time within 90 days after the recipient receives a notice (under para 6-7) that, despite reasonable efforts, the recipient is not likely to comply and voluntarily.

e. If under d above, the DA installation or activity commander initiates enforcement action, attempts to persuade the recipient to comply voluntarily will be continued.

## Chapter 7 Imposing Sanctions

### 7-1. Sanctions available

If a commander of a DA installation or activity has taken action under paragraphs 6-7 and 6-8, the commander may, by order, do the actions listed below. (These actions are subject to paras 7-2 and 7-3.)

a. Terminate, suspend, or refuse to grant or continue assistance to the recipient.

b. Refer the case to the Department of Justice for initiation of enforcement proceedings at a Federal, State, or local level.

c. Pursue remedies under State or local law.

d. Impose other sanctions on consultation with the ASA(M&RA) or designee.

### 7-2. Terminating, suspending, or refusing to grant or continue assistance

A commander of a DA installation or activity may not terminate, suspend, or refuse to grant or continue Federal financial assistance, unless—

a. Such action has been approved by the Secretary of Defense.

b. The commander has given the recipient an opportunity for a hearing (under procedures outlined in chap 8) and a finding of noncompliance has resulted.

c. Thirty calendar days have elapsed since the Secretary of Defense has filed a written report with the congressional committees that have jurisdiction over the program or activity in which the violation of this regulation exists. This report will describe the violation and action to be taken.

d. Such action affects only the particular activity or program (or portion thereof) of the recipient where the violation exists.

### 7-3. Other sanctions

A commander of a DA installation or activity may not impose the sanction provisions outlined in paragraphs 7-2c and d, unless—

a. The commander has given the recipient an opportunity for a hearing (under chap 8); a finding of noncompliance has resulted.

b. The action has been approved by the Secretary of Defense.

c. Ten calendar days have elapsed since the mailing of a notice informing the recipient of the—

(1) Continuing failure to comply with this regulation.

(2) Action necessary to achieve compliance.

(3) Sanction to be imposed.

d. During these 10 calendar days, the DA installation or activity command has made additional efforts to persuade the recipient to comply.

## Chapter 8 Hearings, Decisions, and Notices

### Section I Hearings

#### 8-1. Reasonable notice

a. When a hearing is required by this regulation, reasonable notice will be given to the affected applicant or recipient by registered or certified mail; return receipt for this registered or certified mail will be requested. This notice will advise the applicant or recipient of the—

(1) Proposed action to be taken.

(2) Specific provisions under which the proposed action is to be taken.

(3) Matters of fact or law asserted as the basis for this action.

b. This notice also will provide for one of the following:

(1) Fix a date not less than 20 days after the date of the notice.

The applicant or recipient may request of the responsible DA official that the matter be scheduled for hearing within this time frame.

(2) Advise the applicant or recipient that the matter in question has been set for hearing at a stated place and time. This time and place—

(a) Will be reasonable.

(b) Will be subject to change for cause.

c. The complainant, if any, will be advised of the time and place of the hearing.

d. An applicant or recipient may waive a hearing, and submit written information and argument instead. Failure of an applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, will be deemed—

(1) A waiver of the right to a hearing under this regulation.

(2) Consent to the making of a decision on the basis of such information that is available.

#### 8-2. Time and place of hearing

Hearings will be held at the DA installation or activity, at a time fixed by the responsible DA official; an exception will be if this official determines that the convenience of the applicant or recipient requires that another place be selected. Hearings will be held before the responsible DA official or, at the official's discretion, before a hearing examiner designated by the official.

#### 8-3. Hearing examiner

The hearing examiner will be a field grade official or civilian employee above the grade of GS-12 (or the equivalent); the examiner also will be a person admitted to practice law before a Federal court or the highest court of a State, Territory, Commonwealth, or the District of Columbia.

#### 8-4. Right to counsel

In all proceedings under this chapter, the applicant or recipient and the responsible DA installation or activity commander will have the right to be represented by counsel.

#### 8-5. Procedures

a. The recipient will receive an open hearing, at which he or she or his or her counsel may examine any witnesses present. Both the responsible DA official and the applicant or recipient will be entitled to introduce all relevant evidence on the issues at the outset of or during the hearing as—

(1) Stated in the notice for hearing.

(2) Determined by the officer conducting the hearing.

b. Technical rules of evidence will not apply to hearings conducted under this regulation. But rules or principles designed to assure production of the most credible evidence available will be applied where reasonably necessary by the officer conducting the hearing. These rules or principles also will be designed to subject testimony to test by cross-examination.

c. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered

or taken for record will be open to examination by the parties. Opportunity will be given to refute facts and arguments advanced on either side of the issues.

d. A transcript of the oral evidence will be made; an exception would be as to the extent the substance of the oral evidence is stipulated for the record.

e. All decisions will be based on the hearing record. Written findings will be made.

#### **8-6. Consolidated or joint hearings**

In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under section 504 of the Rehabilitation Act of 1973 (as amended), the ASD(MRA&L), the Secretary of a Military Department, or other responsible DA official designated by the ASD(MRA&L) after consultation with the ASD(MRA&L) may, by agreement with such other departments or agencies as applicable, provide for the following:

a. Conduct of consolidated or joint hearings.

b. The application to such hearings.

c. Application to such hearings to appropriate procedures consistent with this regulation. (Final decisions in such cases will be made under chap 9.)

## **Section II**

### **Decisions and Notices**

#### **8-7. Decision by a person other than the responsible DA official**

a. If the hearing is held by a hearing examiner, the hearing examiner will either make an initial decision or certify the entire record; an initial decision may be made if the examiner is so authorized. The record will include the hearing examiner's recommended findings and proposed decision to the responsible DA official for a final decision. A copy of this initial decision or certification will be mailed to the applicant or recipient.

b. When the initial decision is made by the hearing examiner, the applicant or recipient may file with the responsible DA official his or her exceptions to the initial decision; reasons for the exception will be attached. This filing will be within 30 days of the mailing of such notice of initial decision.

c. In the absence of exceptions, the responsible DA official may, on the official's own motion within 45 days after the initial decision, serve on the applicant or recipient a notice that the official will review the decision.

d. On filing of exceptions or notices of review, the responsible DA official will—

(1) Review the initial decision.

(2) Issue his or her own decision, including the reasons.

e. In the absence of exceptions or notice of review, the initial decision will constitute the final decision of the responsible DA official.

#### **8-8. Decisions on records or review by the responsible DA official**

a. The applicant or recipient will be given reasonable opportunity to file briefs or other written statements of contentions to the responsible DA official when the responsible DA official does any of the following actions:

(1) Has the record certified to him or her for decision.

(2) Reviews the decision of a hearing officer, under paragraph 8-7.

(3) Conducts the hearing.

b. Copies of the final decision of the responsible DA official will be given in writing to—

(1) The applicant or recipient.

(2) The complainant, if any.

#### **8-9. Decisions on record when a hearing is waived**

When a hearing is waived under paragraph 8-1d, a decision will be made on the record by the responsible DA official. Copies of the decision will be given in writing to—

a. The applicant or recipient.

b. The complainant, if any.

#### **8-10. Rulings required**

Each decision of a hearing officer or responsible DA official will set forth the ruling on each finding, conclusion, or exception presented. The decision will identify the requirements imposed by this regulation with which the applicant or recipient has failed to comply.

#### **8-11. Approval by the Secretary of Defense**

a. A final decision of a responsible DA official will be transmitted promptly to the Secretary of Defense when this decision provides for the following:

(1) Suspension to grant or continue Federal financial assistance.

(2) Refusal to grant or continue Federal financial assistance.

(3) Imposition of any other sanction available under this regulation.

b. The Secretary of Defense may—

(1) Approve or vacate the decision.

(2) Remit or mitigate any sanction imposed.

c. Within 30 days, the Secretary of Defense will file a full written report of the circumstances and grounds for such action with the congressional committees having legislative jurisdiction over the programs involved.

d. Any action to suspend, terminate, or refuse to grant or continue Federal financial assistance will be limited—

(1) To the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made.

(2) In its effect to the particular program, or part thereof, in which noncompliance has been so found.

## **Chapter 9**

### **Restoring Eligibility for Financial Assistance**

#### **9-1. Adverse affect**

A recipient who is affected adversely by a final decision issued under chapter 8, section II may at any time request the responsible DA official to restore fully the eligibility to receive Federal financial assistance.

#### **9-2. Restoration of eligibility**

The responsible DA official will restore such eligibility immediately if the official determines that the recipient—

a. Has supplied information that demonstrates that the recipient has satisfied terms and conditions of the order entered under chapter 8, section II.

b. Is complying with this regulation.

c. Has provided reasonable assurance of continued compliance with this regulation.

#### **9-3. Denial of eligibility**

If the responsible DA official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing; this written statement must state why the recipient believes the responsible DA official erred in denying the request. Following such a written request, the recipient will be given an expeditious hearing, under rules of procedure issued by the responsible DA Official; this hearing will determine whether requirements described in paragraph 9-2 have been met. While these proceedings are pending, sanction imposed by the order issued under chapter 8, section II will remain in effect.

## **Chapter 10**

### **Coordination with Sections 502 and 503 of the Rehabilitation Act of 1973 (As Amended)**

#### **10-1. Developing accessibility**

Commanders of DA installations or activities will use DOD 4270.1-M and Office of the Chief of Engineers Manual EM 1110-1-103 in developing requirements for accessibility of facilities. If issues with respect to section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by this regulation are encountered, the ASD(MRA&L) or designee may be consulted. If necessary, the ASD(MRA&L) or designee will consult with the Architectural and Transportation Barriers Compliance Board in resolving these problems. This board can be contacted at 330 C St. SW, Room 1010, WASH DC 20202; (202) 472-2700 or (202) 245-1591.

#### **10-2. Direct consultation**

Commanders of DA installations and activities may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

#### **10-3. Coordination of enforcement actions**

Commanders will—

- a. Coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board.
- b. Notify the ASD(MRA&L) or designee of this coordination.

#### **10-4. Section 503**

The commander will coordinate enforcement actions with the nearest Regional Office of Federal Contract Compliance Programs of the Department of Labor if the conditions discussed below apply. The DA installation or activity commander will notify the ASD(MRA&L) of this coordination.

- a. If a recipient also is a Federal contractor subject to—
  - (1) Section 503 of the Rehabilitation Act of 1973, as amended.
  - (2) The regulations under (1) above (sec 60-741, title 41, Code of Federal Regulations).
- b. If DA installation or activity commander has reason to believe that the recipient is in violation.

#### **10-5. Employment**

DA components that conduct Federal programs or activities covered by this regulation and involve employment of civilian persons to conduct such programs or activities must comply with—

- a. Section 5-1 of the Rehabilitation Act of 1973, as amended.
- b. Implementing rules and regulations of the Equal Employment Opportunity Commission.

**Appendix A**  
**Format for Assurance of Compliance with the**  
**Department of the Army Under Section 504 of the**  
**Rehabilitation Act of 173 (As Amended)**

---

(Name of Recipient)

(Address)

(City or County)

(State and ZIP Code)

Hereby agrees that he or she will comply with:

a. Section 504 of Public Law 93-112, "Rehabilitation Act of 1973" September 26, 1973 (29 U.S.C. 794) (1976);  
b. Section 111 of Public Law 93-516 "Rehabilitation Act Amendments of 1974" December 7, 1974 (29 U.S.C. 706, 780, 790) (1976); and  
c. Section 119 of Public Law 95-602, "Rehabilitation Comprehensive Services, and Development Disabilities Amendments of 1978" November 6, 1978 (sec 794, Note 29, United States Code) (supp III 1979), all requirements imposed by or pursuant to this regulation of the DA and in accordance with Section 504 of the Rehabilitation Act of 1973 (as amended), DA will prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by DA and in programs and activities conducted by DA; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA or if such assistance is in the form of personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant or recipient or in the case of any transfer such as property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant or recipient for the period during which the Federal financial assistance is extended to it by DA.

DA representatives will be allowed to visit recipient facilities. They will inspect the facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities. THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the applicant or recipient by DA, including installment payments after such date on account of arrangements for Federal financial aid which were approved such date. The applicant or recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant or recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the applicant or recipient.

(Date)

(Applicant or Recipient)

("By" name, title, and signature of authorized official)

---

## Glossary

### Section I

#### Abbreviations

##### ASA(M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

##### ASD(MRA&L)

Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

##### DA

Department of the Army

##### DCPP&EO

Deputy for Civilian Personnel Policy and Equal Opportunity

##### EEO

equal employment opportunity

##### HQDA

Headquarters, Department of the Army

##### MACOM

major Army command

##### TDD

telephone devices for the deaf

##### TTY

teletypewriter

### Section II

#### Terms

##### Facility

All, or any portion of, buildings, structures, equipment, roads, walks, parking lots, or other real or personal property; any interest in such property.

##### Federal financial assistance

Grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or other arrangement by which the Federal Government provides, or otherwise makes available, assistance in the forms listed below.

###### a. Funds.

b. Services performed by Federal personnel; these include technical assistance, counseling, training, and provision of statistical or expert information.

c. Real and personal property; interest in or use of such property. This interest or use includes—

(1) Transfers or leases of such property for less than fair market value or for reduced consideration.

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

##### Handicapped person

###### a. Person who—

(1) Has a physical or mental impairment

that substantially limits one or more major life activities.

(2) Has a record of such an impairment.

(3) Is regarded as having such an impairment.

b. For purposes of this regulation (as it relates to employment programs of recipients) this term does not include an individual—

(1) Who is an alcohol or drug abuser.

(2) Whose current use of alcohol or drugs prevents him or her from performing the duties of the job in question.

(3) Whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others.

c. As used in this regulation, this term includes the following:

(1) Physical or mental impairment that include the following:

(a) Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic; skin; and endocrine.

(b) Mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) Such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, and muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, drug abuse, and alcoholism.

(2) Impairment of major life activities that include the following: functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of impairment, such as the following: history of, or has been misclassified as having, mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment, such as any of the following:

(a) Physical or mental impairment that does not substantially limit major life activities, but treated by a recipient or DA as constituting such a limitation.

(b) Physical or mental impairment that substantially limits major life activities only as a result of attitudes of others toward such impairment.

(5) Has none of the impairments defined in (1) through (4) above, but is treated by a recipient or the DA as having such an impairment.

##### Historic properties

Properties listed or eligible for listing in the National Register of Historic Places.

##### Qualified handicapped person

Handicapped person who with respect to—

a. Employment, can perform the essential

functions of the job in question with reasonable accommodation.

b. Services, meets the essential eligibility requirements for receiving the services in question.

##### Recipient

a. State or political subdivision or instrumentality thereof.

b. Public or private agency, institution, organization, or other entity.

c. Person who receives Federal financial assistance directly or through another recipient; this person includes successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance.

d. Persons and entities applying to be recipients.

##### Substantial impairment

Significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### Section III

#### Special Abbreviations and Terms

There are no special terms.

**Unclassified**

PIN 054474-000



# USAPA

ELECTRONIC PUBLISHING SYSTEM  
TEXT FORMATTER ... Version 2.56

PIN: 054474-000  
DATE: 01-25-99  
TIME: 10:51:24  
PAGES SET: 17

---

DATA FILE: ar600-7.fil  
DOCUMENT: AR 600-7  
DOC STATUS: NEW PUBLICATION



## Department of Defense

# DIRECTIVE

NUMBER 1020.1

March 31, 1982

Certified Current as of November 21, 2003

---

Incorporating Change 1, November 16, 1994

ASD(MRA&L)

SUBJECT: Nondiscrimination on the Basis of Handicap in Programs and Activities  
Assisted or Conducted by the Department of Defense

- References: (a) Section 504 of Public Law 93-112, "Rehabilitation Act of 1973,"  
September 26, 1973 (29 U.S.C. 794)(1976)  
(b) Section 111 of Public Law 93-516, "Rehabilitation Act Amendments of  
1974," December 7, 1974 (29 U.S.C. 706, 780, 790)(1976)  
(c) Section 119 of Public Law 95-602, "Rehabilitation, Comprehensive  
Services, and Developmental Disabilities Amendments of 1978,"  
November 6, 1978 (29 U.S.C. 794)(Supp. III 1979)  
(d) Department of Justice Regulation, "Implementation of Executive Order  
12250, Nondiscrimination on the Basis of Handicap in Federally Assisted  
Programs," August 11, 1981 (28 CFR 41)  
(e) Chapter 35 of title 44, United States Code

### 1. PURPOSE

This Directive implements references (a) through (d) to prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by the Department of Defense and in programs and activities conducted by the Department of Defense.

### 2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the National Guard Bureau, and the Defense Agencies (hereafter referred to as "DoD Components") insofar as they:

2.1.1. Disburse Federal financial assistance to programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.2., enclosure 1); or

2.1.2. Conduct programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.3., enclosure 1).

2.2. This Directive also applies to each recipient of Federal financial assistance disbursed by the Department of Defense and to each program and activity that receives or benefits from such assistance, insofar as such recipient, program, or activity affects a handicapped person in the United States.

### 3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

### 4. POLICY

It is DoD policy that no qualified handicapped person shall be subjected to discrimination on the basis of handicap under any program or activity that receives or benefits from Federal financial assistance disbursed by a DoD Component or under any Federal program or activity that is conducted by a DoD Component. Guidelines for determining actions that discriminate against handicapped persons are prescribed in enclosure 3.

### 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)), or designee, shall monitor compliance with this Directive. In discharging this responsibility, the ASD(MRA&L), or designee, shall:

5.1.1. Coordinate efforts of DoD Components to enforce this Directive.

5.1.2. Assist in the development of standards and procedures promulgated pursuant to enclosures 3, 4, and 5 of this Directive.

5.1.3. Perform the responsibilities assigned to the ASD(MRA&L) in enclosures 3, 4, and 5 of this Directive.

5.1.4. Otherwise assist DoD Components in implementing this Directive.

5.2. The Heads of DoD Components shall comply with this Directive. In discharging this responsibility, they shall:

5.2.1. Designate a policy-level official to ensure compliance with this Directive, receive and investigate complaints filed under this Directive, and otherwise manage DoD Component responsibilities under this Directive.

5.2.2. Notify the ASD(MRA&L), or designee, of the name, position, location, and telephone number of persons selected by them to be policy-level officials within 15-calendar days of such a selection.

5.2.3. Issue guidelines pursuant to enclosure 4 of this Directive.

5.2.4. Cooperate fully with the ASD(MRA&L), or designee, in that official's performance of the responsibilities assigned herein, including furnishing to the ASD(MRA&L), or designee, in a timely fashion any requested reports and information.

5.2.5. Assign sufficient personnel to implement and to ensure effective enforcement of this Directive.

## 6. ASSURANCES REQUIRED AND PROCEDURES

See enclosures 3, 4, and 5.

## 7. INFORMATION REQUIREMENTS

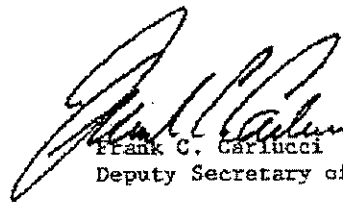
7.1. Each DoD Component shall maintain a log of all complaints that are filed with it or its recipients under this Directive. The log shall contain the complainant's name (last name, first, and middle initial) and address (street address, city, State, and zip code), the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the nature of the complaint, and the current status of the complaint investigation or resolution. Each DoD Component shall submit a narrative summary report on complaints by memorandum to the ASD(MRA&L), or designee, before July 15 and January 15 of each year. This reporting requirement has been assigned Report Control Symbol DDM(SA)1596.

7.2. Each DoD Component shall submit a narrative report by memorandum to the ASD(MRA&L), or designee, whenever, pursuant to enclosure 4 of this Directive, the DoD Component notifies an applicant or recipient that noncompliance with this Directive is indicated. The report shall include the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the date (YYMMDD) and nature of the finding, and the name of the applicable Federally assisted program or activity. This reporting requirement has been assigned Report Control Symbol DD-M(AR)1597.

7.3. The record keeping requirements contained in paragraph E4.3.2., enclosure 4, have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35 (reference (e)) and have been assigned OMB No. 0704-0102.

8. EFFECTIVE DATE

This Directive is effective June 1, 1982.



Frank C. Carlucci  
Deputy Secretary of Defense

Enclosures - 5

- E1. Programs and Activities Subject to This Directive
- E2. Definitions
- E3. Guidelines for Determining Discriminatory Practices
- E4. Ensuring Compliance with This Directive in Federal Financial Assistance  
Programs and Activities
- E5. Ensuring Compliance with This Directive in Programs and Activities Conducted  
by the Department of Defense

E1. ENCLOSURE 1

PROGRAMS AND ACTIVITIES SUBJECT TO THIS DIRECTIVE

E1.1.1. This Directive applies to all DoD Components and recipients of Federal financial assistance disbursed by a DoD Component insofar as the programs and activities of the DoD Components and recipients affect handicapped persons in the United States. Existing programs and activities that are assisted or conducted by a DoD Component and that are subject to this Directive, but do not appear in paragraphs E1.1.2. or E1.1.3., below, are covered even though not listed. DoD Components must report new programs and activities that are subject to this Directive to the ASD(MRA&L), or designee, within 15-calendar days of their creation or funding.

E1.1.2. Federal financial assistance programs subject to this Directive include:

E1.1.2.1. Title 32, United States Code, Sections 101-716 (1976 and Supp. III 1979): the Army and Air National Guard.

E1.1.2.2. Title 40, United States Code, Sections 483, 484, and 512 (1976); title 49, United States Code, Sections 1101 and 1107 (1976); and title 10, United States Code, Sections 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547 (1976 and Supp. IV 1980): various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property.

E1.1.2.3. Title 10, United States Code, Sections 4307-4311 (1976), and the annual Department of Defense Appropriations Act: National Program for the Promotion of Rifle Practice.

E1.1.2.4. Secretary of the Navy Instruction 5720.19E, "Navy Science Cruiser Program," February 24, 1977.

E1.1.2.5. Title 10, United States Code, Section 9441 (1976 and Supp. IV 1980): Civil Air Patrol.

E1.1.2.6. Title 41, United States Code, Sections 501-509 (Supp. III 1979): Federal grants and cooperative agreements.

E1.1.2.7. Title 33, United States Code, Section 426 (1976 and Supp. III 1979): Army Corps of Engineers participation in cooperative investigations and studies concerning the erosion of shores of coastal and lake waters.

E1.1.2.8. Title 33, United States Code, Sections 426e-426h (1976): Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores.

E1.1.2.9. Title 16, United States Code, Section 460d (1976): construction and operation of public park and recreational facilities in water resource development projects under the administrative jurisdiction of the Department of the Army.

E1.1.2.10. Title 33, United States Code, Section 701c-3 (1976): payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes.

E1.1.2.11. Title 33, United States Code, Sections 558c and 702d-1 (1976); title 10, United States Code, Sections 2668 and 2669 (1976); title 43, United States Code, Section 961 (1976); and title 40, United States Code, Section 319 (1976): grants of easements without consideration, or at a nominal or reduced consideration, on land under the control of the Department of the Army at water resource development projects.

E1.1.2.12. Title 33, United States Code, Sections 540 and 577 (1976): Army Corps of Engineers assistance in the construction of small boat harbor projects.

E1.1.2.13. Title 33, United States Code, Section 701s (1976): emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works.

E1.1.2.14. Title 33, United States Code, Section 633 (1976): Army Corps of Engineers contracts for the protection, alteration, reconstruction, relocation, or replacement of structures and facilities.

E1.1.2.15. Title 50, United States Code, Section 453 (1976): Defense Logistics Agency loans of industrial equipment to educational institutions (Tools for Schools).

E1.1.2.16. Title 33, United States Code, Section 610 (1976): provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for the control of aquatic plant growths in rivers, harbors, and allied waters.

E1.1.2.17. Title 42, United States Code, Section 1962d-16 (1976): provision of specialized services by the Army Corps of Engineers to any State for the preparation of comprehensive plans for drainage basins located within the boundaries of said State.

E1.1.2.18. Title 33, United States Code, Section 603a (1976): provision of specialized services by the Army Corps of Engineers to improve channels for navigation.

E1.1.2.19. Title 33, United States Code, Section 701g (1976): provision of specialized services by the Army Corps of Engineers to reduce flood damage.

E1.1.2.20. Title 24, United States Code, Sections 44c and 47 (1976): United States Soldiers' and Airmen's Home.

E1.1.2.21. Title 10, United States Code, Chapter 55, as implemented by DoD 6010.8 -R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," January 10, 1977.

E1.1.3. All programs and activities conducted by the Department of Defense that affect handicapped persons in the United States are subject to this Directive. They include:

E1.1.3.1. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment (such as by making cassette recordings of proposed rules).

E1.1.3.2. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component but held in non-Government buildings.

E1.1.3.3. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component or by a non-DoD organization but held in a DoD building.

E1.1.3.4. Open houses, memorial services, tours, or other ceremonies held on or in DoD property.

E1.1.3.5. Military museums.

E1.1.3.6. Historic vessels.

E1.1.3.7. Historic buildings and properties maintained by a DoD Component and properties designated as historic under a statute of the appropriate State or local governmental body.

E1.1.3.8. Schools operated by the Department of Defense within the United States pursuant to Section 6 of Pub. L. 81-874, title 20, United States Code, Section 241 (1976).



E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Facility. All or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or any interest in such property.

E2.1.2. Federal Financial Assistance. Any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Federal Government provides or otherwise makes available assistance in the form of:

E2.1.2.1. Funds.

E2.1.2.2. Services performed by Federal personnel, including technical assistance, counseling, training, and provision of statistical or expert information.

E2.1.2.3. Real and personal property or any interest in or use of such property, including:

E2.1.2.3.1. Transfers or leases of such property for less than fair market value or for reduced consideration.

E2.1.2.3.2. Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

E2.1.3. Handicapped Person. Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this Directive as it relates to employment programs of recipients, such term does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others. As used in this paragraph:

E2.1.3.1. Physical or Mental Impairment. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, and

muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; drug abuse; and alcoholism.

E2.1.3.2. Major Life Activities. Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E2.1.3.3. Has a Record of Such an Impairment. Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

E2.1.3.4. Is Regarded as Having an Impairment. Has:

E2.1.3.4.1. A physical or mental impairment that does not substantially limit major life activities but is treated by a recipient or DoD Component as constituting such a limitation;

E2.1.3.4.2. A physical or a mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

E2.1.3.4.3. None of the impairments defined above, but is treated by a recipient or DoD Component as having such an impairment.

E2.1.4. Historic Properties. Those properties listed or eligible for listing in the National Register of Historic Places.

E2.1.5. Include; Such As. Not all the possible items are covered, whether like or unlike the ones named.

E2.1.6. Qualified Handicapped Person. A handicapped person who:

E2.1.6.1. With respect to employment, can perform the essential functions of the job in question with reasonable accommodation.

E2.1.6.2. With respect to services, meets the essential eligibility requirements for receiving the services in question.

E2.1.7. Recipient. Any State or political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any person that receives Federal financial assistance directly or through another recipient, including any successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance. The term includes persons and entities applying to be recipients.

E2.1.8. Substantial Impairment. A significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

E3. ENCLOSURE 3

GUIDELINES FOR DETERMINING DISCRIMINATORY PRACTICES

E3.1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

E3.1.1. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by the Department of Defense or that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.1.2. A recipient or DoD Component may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

E3.1.2.1. Provide different or separate aid, benefits, or services to handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others;

E3.1.2.2. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

E3.1.2.3. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

E3.1.2.4. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others; or

E3.1.2.5. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

E3.1.3. A recipient or DoD Component may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different from regular programs or activities, even if such separate or different programs and activities are permissible under subparagraph E3.1.2.1., above.

E3.1.4. A recipient or DoD Component may not provide assistance to an Agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity.

E3.1.5. A recipient or DoD Component may not deny, on the basis of handicap, a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

E3.1.6. A recipient or DoD Component may not use, directly or through contractual or other arrangements, criteria or methods of administration that:

E3.1.6.1. Subject qualified handicapped persons to discrimination on the basis of handicap;

E3.1.6.2. Defeat or substantially impair accomplishment of the objectives of the recipient's or DoD Component's program or activity with respect to handicapped persons; or

E3.1.6.3. Perpetuate discrimination by another recipient if both recipients are subject to common administrative control or are agencies of the same State.

E3.1.7. In determining the site or location of a facility, a recipient or DoD Component may not make selections that:

E3.1.7.1. Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

E3.1.7.2. Defeat or substantially impair, with respect to handicapped persons, the accomplishment of the objectives of the program or activity.

E3.1.8. Recipients and DoD Components shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

E3.1.9. Recipients and DoD Components shall take appropriate steps to make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

E3.1.10. This section may not be interpreted to prohibit the exclusion of:

E3.1.10.1. Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or Executive order to handicapped persons; or

E3.1.10.2. One class of handicapped persons from a program or activity limited by Federal statute or Executive order to a different class of handicapped persons.

E3.1.11. Recipients and DoD Components shall take appropriate steps to ensure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving or

benefiting from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense because of the absence of auxiliary aids, such as certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

E3.2. PROHIBITIONS AGAINST EMPLOYMENT DISCRIMINATION BY RECIPIENTS

E3.2.1. No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.2.2. The prohibition against discrimination in employment applies to the following:

E3.2.2.1. Recruitment, advertising, and processing of applications for employment.

E3.2.2.2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

E3.2.2.3. Rates of pay or any other form of compensation and changes in compensation.

E3.2.2.4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

E3.2.2.5. Leaves of absence, sick leave, or any other leave.

E3.2.2.6. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

E3.2.2.7. Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence for training.

E3.2.2.8. Programs and activities sponsored by the employer, including social and recreational programs.

E3.2.2.9. Any other term, condition, or privilege of employment.

E3.2.3. A recipient may not participate in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by

this section, including relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

E3.2.4. A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation includes providing ramps, accessible restrooms, drinking fountains, interpreters for deaf employees, readers for blind employees, amplified telephones, TDDs such as Teletypewriters or Telephone Writers (TTYs), and tactile signs on elevators.

E3.2.5. A recipient may not use employment tests or criteria that discriminate against handicapped persons, and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

E3.2.6. A recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry about whether an applicant is a handicapped person or about the nature or severity of a handicap. A recipient may make, however, a pre-employment inquiry into an applicant's ability to perform job-related functions.

E3.2.7. When a recipient is taking remedial action to correct the effects of past discrimination or is taking voluntary action to overcome the effects of conditions that have resulted in limited participation by handicapped persons in its Federally assisted program or activity, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped if:

E3.2.7.1. The recipient makes clear to the applicants that the information is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts.

E3.2.7.2. The recipient makes clear to the applicants that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph E3.2.9., below, that refusal to provide it will not subject the applicants to any adverse treatment, and that it will be used only in accordance with this Directive.

E3.2.8. Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if:

E3.2.8.1. All entering employees are subjected to such an examination, regardless of handicap.

E3.2.8.2. The results of such an examination are used only in accordance with this Directive, which prohibits discrimination against a qualified handicapped person on the basis of handicap.

E3.2.9. Information obtained under this section concerning the medical condition or history of applicants shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

E3.2.9.1. Supervisors and managers may be informed about restrictions on the work or duties of handicapped persons and about necessary accommodations.

E3.2.9.2. First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

E3.2.9.3. Government officials investigating compliance with Section 504 and this Directive shall be provided relevant information upon request.

### E3.3. PROGRAM ACCESSIBILITY

E3.3.1. General Requirements. No qualified handicapped person shall, because a recipient's or DoD Component's facilities are inaccessible to or not usable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense.

#### E3.3.2. Existing Facilities

E3.3.2.1. A recipient or DoD Component shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This does not necessarily require a recipient or DoD Component to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M, "Department of Defense Construction Criteria Manual," June 1, 1978, and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, "Design for the Physically Handicapped," October 15, 1976. Inquiries on specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

E3.3.2.2. When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by paragraph E3.3.1., above:

E3.3.2.2.1. Such changes shall be made as soon as practicable, but not later than 3 years after the effective date of this Directive; however, if the program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the DoD Component concerned may extend this period of time. This extension shall be for a reasonable and definite period, which shall be determined after consultation with the ASD(MRA&L), or designee.

E3.3.2.2.2. The recipient or DoD Component shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting forth the steps necessary to complete such changes.

E3.3.2.2.3. The recipient or DoD Component shall make a copy of the transition plan available for public inspection. At a minimum, the plan shall:

E3.3.2.2.3.1. Identify physical obstacles in the recipient's or DoD Component's facilities that limit the accessibility of its program or activity to handicapped persons.

E3.3.2.2.3.2. Describe in detail the methods that will be used to make the facilities accessible.

E3.3.2.2.3.3. Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period.

E3.3.2.2.3.4. Indicate the person (last name, first, and middle initial) responsible for implementation of the transition plan.

E3.3.2.3. A recipient or DoD Component may comply with subparagraphs E3.3.2.1. and E3.3.2.2., above, through such means as the acquisition or redesign of equipment, such as telecommunication or other telephonic devices; relocation of classes or other services to accessible buildings; assignment of aides to beneficiaries, such as readers or certified sign-language interpreters; home visits; delivery of health, welfare, or other services at accessible alternate sites; alteration of existing facilities and construction of new facilities in conformance with this subsection and paragraph E3.3.3., below; or any other method that results in making the program or activity of the recipient or DoD Component accessible to handicapped persons.

E3.3.2.4. A recipient or DoD Component is not required to make structural changes in existing facilities when other methods are effective in achieving compliance with this section.



E3.3.2.5. In choosing among available methods for meeting the requirements of this section, a recipient or DoD Component shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

E3.3.3. New Construction. New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall be designed and constructed, to the maximum extent feasible, to be readily accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103. Inquiries about specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

#### E3.3.4. Historic Properties

E3.3.4.1. In the case of historic properties, program accessibility shall mean that, when viewed in their entirety, programs are readily accessible to and usable by handicapped persons. Because the primary benefit of historic properties is the experience of the property itself, DoD Components and recipients shall give priority to those methods of achieving program accessibility that make the historic property, or portions thereof, physically accessible to handicapped persons.

E3.3.4.2. Methods of achieving program accessibility include:

E3.3.4.2.1. Making physical alterations that give handicapped persons access to otherwise inaccessible areas or features of historic properties.

E3.3.4.2.2. Using audiovisual materials and devices to depict otherwise inaccessible areas or features of historic properties.

E3.3.4.2.3. Assigning individuals to guide handicapped persons into or through otherwise inaccessible portions of historic properties.

E3.3.4.2.4. Adopting other innovative methods.

E3.3.4.3. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the DoD Component or recipient may seek a modification or waiver of access standards from the ASD(MRA&L), or designee.

E3.3.4.3.1. A decision to grant a modification or waiver shall be based on consideration of the following:

E3.3.4.3.1.1. Scale of the property, reflecting its ability to absorb alterations.

E3.3.4.3.1.2. Use of the property, whether primarily for public or private purposes.

E3.3.4.3.1.3. Importance of the historic features of the property to the conduct of the program.

E3.3.4.3.1.4. Costs of alterations in comparison to the increase in accessibility.

E3.3.4.3.2. The ASD(MRA&L), or designee, shall review periodically any waiver granted under this paragraph and may withdraw it if technological advances or other changes warrant.

E3.3.4.4. The decision by the ASD(MRA&L), or designee, to grant a modification or waiver of access standards is subject to Section 106 of the National Historic Preservation Act, as amended, and shall be made in accordance with the Advisory Council on Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800). When the property is Federally owned or when Federal funds may be used for alterations, the ASD(MRA&L), or designee, shall obtain the comments of the Advisory Council on Historic Preservation when required by Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800) prior to effectuation of structural alterations.

E3.3.4.5. DoD Component guidelines prepared in accordance with enclosure 4 of this Directive shall include a listing of all historic properties, including historic ships, subject to this Directive and a plan for compliance with this paragraph.

#### E3.3.5. Military Museums

E3.3.5.1. In the case of military museums, program accessibility shall mean that exhibits, displays, tours, lectures, circulating or traveling exhibits, and other programs of military museums are accessible to and usable by handicapped persons. Methods of meeting this requirement include the following:

E3.3.5.1.1. Museum programs may be made accessible to deaf and hearing-impaired persons by means such as training museum staff, such as docents, in sign language; providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors; ensuring that clear, concise language is used on all museum signs and display labels; providing amplification devices; or providing printed scripts for films, videotapes, lectures, or tours. DoD Components are encouraged to use "Museums and Handicapped Students: Guidelines for Educators," published by the National Air and Space Museum, Smithsonian Institution, Washington, DC 20560.

E3.3.5.1.2. Museum programs may be made accessible to blind and visually-impaired persons by means such as providing museum catalogues in a large-print edition printed over Braille; providing cassette tapes, records, or disks for museum tours or exhibits; providing readers to accompany blind or visually impaired visitors; using large-print and Braille display cards at exhibits; providing raised-line maps of the museum building; using raised-line drawings, reproductions, or models of large exhibits to facilitate tactile experiences when touching exhibits is prohibited; placing large-print and Braille signs to identify galleries, elevators, restrooms, and other service areas; and permitting guide dogs in all museum facilities.

E3.3.5.1.3. Museum programs may be made accessible to other physically impaired persons by means such as lowering display cases; spacing exhibits to facilitate movement; using ramps in galleries; increasing lighting in exhibit areas to facilitate viewing from a distance; providing places to sit in exhibit areas; making restrooms accessible; using large-print exhibit display cards to facilitate reading from a distance; and sensitizing museum staff to consider the needs of handicapped visitors when organizing exhibits.

E3.3.5.2. DoD Component guidelines developed in accordance with enclosure 4 of this Directive shall identify military museums subject to this paragraph and shall contain a plan for making museum programs accessible to handicapped persons. Technical assistance in the preparation and content of these plans may be obtained from the National Access Center, 1419 27th Street, NW, Washington, DC 20007 ((202) 333-1712 or TTY (202) 333-1339). In addition, community organizations that serve handicapped persons and handicapped persons themselves shall be consulted in the preparation of these plans.

#### E3.4. REASONABLE ACCOMMODATION

E3.4.1. A recipient or DoD Component shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient or DoD Component demonstrates to the ASD(MRA&L), or designee, that the accommodation would impose an undue hardship on the operation of its program.

E3.4.2. Reasonable accommodation includes the following:

E3.4.2.1. Making facilities used by employees readily accessible to and usable by handicapped persons.

E3.4.2.2. Job restructuring; part-time or modified work schedules; acquisition or modification of equipment or devices, such as telecommunication or other telephonic instruments; the provision of readers or certified sign-language interpreters; and similar actions.

E3.4.3. In determining whether an accommodation would impose an undue hardship on the operation of a recipient's or DoD Component's program, the ASD(MRA&L), or designee, shall consider the following factors, at a minimum:

E3.4.3.1. The overall size of the recipient's or DoD Component's program or activity, such as the number of employees, number and type of facilities, and size of budget.

E3.4.3.2. The size of the recipient's or DoD Component's operations, including the composition and structure of the recipient's or DoD Component's workforce.

E3.4.3.3. The nature and cost of the accommodation needed.

E3.4.4. A recipient or DoD Component may not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

E4. ENCLOSURE 4

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS AND ACTIVITIES

E4.1. SUPPLEMENTARY GUIDELINES ISSUED BY THE DoD COMPONENTS

E4.1.1. Whenever necessary, DoD Components shall publish supplementary guidelines for each type of program or activity to which they disburse Federal financial assistance within 120 days of the effective date of this Directive or of the effective date of any subsequent statute authorizing Federal financial assistance to a new type of program or activity. DoD Components shall obtain approval of these supplementary guidelines from the ASD(MRA&L), or designee, before issuing them. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review and approval. To the extent that supplementary guidelines issued by DoD Components deal with the employment of civilians in programs and activities subject to this Directive, the ASD(MRA&L), or designee, shall also obtain the approval of the Equal Employment Opportunity Commission (EEOC) in accordance with Executive Order 12067.

E4.1.2. The ASD(MRA&L), or designee, and the DoD Components shall ensure that their supplementary guidelines conform to the requirements of this Directive and that they provide:

E4.1.2.1. A description of the types of programs and activities covered.

E4.1.2.2. Examples of prohibited practices likely to arise with respect to those types of programs and activities.

E4.1.2.3. A list of the data collection and reporting requirements of the recipients.

E4.1.2.4. Procedures for processing and investigating complaints.

E4.1.2.5. Procedures for hearings to determine compliance by recipients with this Directive.

E4.1.2.6. Requirements or suggestions for affirmative action on behalf of qualified handicapped persons.

E4.1.2.7. Requirements for the dissemination of program and complaint information to the public.

E4.1.2.8. A description of the form of the assurances that must be executed pursuant to section E4.2., below, and sample assurances.

E4.1.2.9. Requirements concerning the frequency and nature of post-approval reviews conducted pursuant to section E4.8., below.

E4.1.2.10. A period of time, provided for by subparagraph E3.3.2.2.2. of enclosure 3, for the development of a transition plan that sets out the steps necessary to complete structural changes that might be required by section E3.3. of enclosure 3.

E4.1.2.11. The maximum period of time that may be allowed for extensions that might be granted pursuant to subparagraph E3.3.2.2. of enclosure 3.

E4.1.2.12. An appendix that contains a list of identified programs and activities of the type covered by the supplementary guidelines, including the names of the programs and activities and the authorizing statute, regulation, or directive for each program and activity.

E4.1.2.13. Requirements for the recipient to designate a responsible official to coordinate the implementation of supplementary guidelines.

E4.1.2.14. Requirements for any other actions or procedures necessary to implement this Directive.

E4.1.3. When the Head of a DoD Component determines that it would not be appropriate to include one or more of the provisions described in paragraph E4.1.2., above, in the supplementary guidelines of that DoD Component or that it is not necessary to issue such guidelines at all, the reasons for such determination shall be stated in writing and submitted to the ASD(MRA&L), or designee, for review and approval. Once that determination is approved, the DoD Component shall make it available to the public upon request.

E4.1.4. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines current and accurate. When a DoD Component determines that a program or activity should be added to or deleted from the guidelines, the DoD Component shall notify the ASD(MRA&L), or designee, in writing.

## E4.2. REQUIRED ASSURANCES

E4.2.1. The DoD Components shall require all recipients to file written assurances that their programs or activities will be conducted in accordance with this Directive and supplementary guidelines promulgated by the DoD Components. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DoD Component shall attempt to effect compliance pursuant to sections E4.6. through E4.8.,

below, provided that if assistance is due and payable to the recipient based on an application approved prior to the effective date of this Directive, the DoD Component shall continue the assistance while any proceedings required by sections E4.14. through E4.22., below, are pending.

E4.2.2. The DoD Components shall advise each recipient of the required elements of the assurance and, with respect to each program or activity, of the extent to which those receiving assistance from recipients shall be required to execute similar assurances.

E4.2.3. The DoD Components shall ensure that each assurance:

E4.2.3.1. Obligates the recipient to advise the DoD Component of any complaints received that allege discrimination against handicapped persons.

E4.2.3.2. Obligates the recipient to collect and provide the items of information that the DoD Component lists in its supplementary guidelines pursuant to subparagraph E4.1.2.3., above.

E4.2.3.3. Is made applicable to any Federal financial assistance that might be disbursed by a DoD Component without the submission of a new application.

E4.2.3.4. Obligates the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement or is possessed by the recipient.

E4.2.3.5. Includes a provision recognizing that the U.S. Government has the right to seek judicial enforcement of Section 504 and this Directive.

#### E4.3. SELF-EVALUATION AND CONSULTATION WITH INTERESTED PERSONS AND ORGANIZATIONS

E4.3.1. The DoD Components shall require recipients to conduct, within 6 months of the effective date of this Directive or of first receiving Federal financial assistance disbursed by the Department of Defense, a self-evaluation with the assistance of interested persons, including handicapped persons or organizations that represent them. When appropriate, the DoD Components also shall require recipients to consult at least annually with such persons. The "Department of Health, Education and Welfare Section 504 Technical Assistance Reserve Directory," April 1980, shall be consulted to identify likely sources for consultation. In conducting its self-evaluation, each recipient shall:

E4.3.1.1. Evaluate the effects of its policies and practices with respect to its compliance with this Directive and the applicable DoD Component's supplementary guidelines.

E4.3.1.2. Modify any policies that do not meet such requirements.

E4.3.1.3. Take appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.

E4.3.2. For at least 3 years following the completion of a self-evaluation required under paragraph E4.3.1., above, a recipient shall maintain on file, make available for public inspection, and provide to the ASD(MRA&L), or designee, upon request:

E4.3.2.1. A list of the interested persons (last names, first names, and middle initials) consulted.

E4.3.2.2. A description of areas examined and problems identified, if any, with respect to those areas.

E4.3.2.3. A description of any modification made and remedial steps taken.

#### E4.4. DISSEMINATION OF INFORMATION

E4.4.1. Within 90 days of the effective date of this Directive or of first receiving assistance from the Department of Defense and on a continuing basis thereafter, each recipient shall notify beneficiaries and employees of their rights under this Directive and shall take appropriate steps to notify participants, beneficiaries, applicants for employment and employees, including those with impaired vision or hearing, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of handicap in violation of this Directive. The notification shall state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by posting notices, publishing announcements in newspapers and magazines, placing notices in its publications, or distributing memoranda or other written communications.

E4.4.2. If a recipient publishes or uses and makes available to participants, beneficiaries, applicants for employment, or employees recruitment materials or publications containing general information about the recipient's programs and activities, it shall include in those materials or publications a statement of the policy described in paragraph E4.4.1., above. This may be accomplished by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

E4.4.3. Understandable materials developed in accordance with this section shall be provided to ensure that all beneficiaries and employees of the recipient understand the information. In addition, recipients shall disseminate appropriate and comprehensive



information about formal and informal complaint and appeal procedures, including directions on how and where to file complaints and to appeal DoD Component decisions.

#### E4.5. INTIMIDATION AND INTERFERENCE

Recipients and the DoD Components shall take reasonable steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of retaliating against, interfering with, or discouraging the filing of a complaint, furnishing of information, or assisting or participating in an investigation, compliance review, hearing, or other activity related to the administration of this Directive.

#### E4.6. STAFF RESPONSIBILITIES

All DoD Component determinations of recipient compliance with this Directive shall be subject to reviews by the ASD(MRA&L), or designee. When responsibility for approving applications for Federal financial assistance disbursed by a DoD Component is assigned to regional or area offices of the DoD Component, personnel in such offices shall be designated to perform the functions described in sections E4.8. and E4.14. through E4.22., below.

#### E4.7. ACCESS TO RECORDS AND FACILITIES

Each recipient shall permit access to its premises by DoD officials during normal business hours when such access is necessary for conducting onsite compliance reviews or complaint investigations, and shall allow such officials to photograph facilities and to inspect and copy any books, records, accounts, and other material relevant to determining the recipient's compliance with this Directive. Information so obtained shall be used only in connection with the administration of this Directive. If the recipient does not have the information requested, it shall submit to the DoD Component a written report that contains a certification that the information is not available and describes the good-faith efforts made to obtain the information.

#### E4.8. COMPLIANCE REVIEW

The DoD Components shall determine the compliance of each recipient with this Directive as follows:

E4.8.1. General. Whenever possible, the DoD Components shall perform compliance reviews in conjunction with their review and audit efforts implementing Title VI of the Civil Rights Act of 1964.

E4.8.2. Desk Audit Application Review. Before approving an application for Federal financial assistance, the DoD Component concerned shall make a written determination as to whether the recipient is in compliance with this Directive, based on a review of the assurance of compliance executed by a recipient pursuant to section E4.2., above, and other data submitted by the recipient. When a determination cannot be made from the assurance and other data submitted by the recipient, the DoD Component concerned shall require the recipient to submit additional information and shall take other steps as necessary to determine the recipient's compliance with this Directive. If this additional information demonstrates that the recipient is in compliance with this Directive, the DoD Component shall notify the recipient promptly that it is in compliance.

E4.8.3. Pre-approval Onsite Review

E4.8.3.1. When a desk audit application review conducted pursuant to paragraph E4.8.2., above, indicates that the recipient might not be in compliance with this Directive, the DoD Component concerned may conduct a pre-approval onsite review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The DoD Component shall conduct such a review:

E4.8.3.1.1. When appropriate, if a desk audit application review reveals that the recipient's compliance posture is questionable because of a history of discrimination complaints, current discrimination complaints, a noncompliance determination by another Government Agency or DoD Component, or other indications of possible non-compliance; or

E4.8.3.1.2. If Federal financial assistance is requested for construction, except under extraordinary circumstances, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with section E3.3. of enclosure 3.

E4.8.3.2. Pre-approval onsite reviews shall be conducted under DoD Component supplementary guidelines and in accordance with the provisions of paragraph E4.8.4., below, concerning post-approval reviews.

E4.8.4. Post-approval Reviews. The DoD Components shall:

E4.8.4.1. Establish and maintain effective programs of post-approval reviews.

E4.8.4.2. Conduct such reviews of each recipient, the frequency and the nature of which shall be prescribed in the DoD Component supplementary guidelines implementing this Directive.

E4.8.4.3. Require recipients periodically to submit compliance reports to them.

E4.8.4.4. Record the results of the reviews, including findings of fact and recommendations.

E4.8.5. A DoD Component shall complete a review within 180 calendar days of initiating it unless an extension of time is granted by the ASD(MRA&L), or designee, for good cause shown, and shall either:

E4.8.5.1. Find the recipient to be in compliance and notify the recipient of that finding; or

E4.8.5.2. Notify the recipient and the ASD(MRA&L), or designee, of a finding of probable noncompliance, pursuant to section E4.15., below.

#### E4.9. FILING OF COMPLAINTS AGAINST RECIPIENTS

E4.9.1. The DoD Components shall establish and publish in their supplementary guidelines procedures for the prompt processing and disposition of complaints against recipients, consistent with this section.

E4.9.2. A DoD Component shall consider all complaints that:

E4.9.2.1. Are filed with it within 180 days of the alleged discrimination or within a longer period of time if an extension is granted for good cause by the DoD Component with the approval of the ASD(MRA&L), or designee.

E4.9.2.2. Include the name, address, and telephone number, if any, of the complainant; the name and address of the recipient committing the alleged discrimination; a description of the acts or omissions considered to be discriminatory; and other pertinent information.

E4.9.2.3. Are signed by the complainant or the complainant's authorized representative (legal counsel or a person with power of attorney granted by the complainant).

E4.9.3. The DoD Components shall transmit a copy of each complaint filed with them to the ASD(MRA&L), or designee, within 10-calendar days after its receipt.

E4.9.4. If the information in a complaint is incomplete, the DoD Component shall request the complainant to provide the additional information required. If the DoD Component does not receive this requested information within 30-calendar days of the date of the request, the case may be closed and the complainant so notified in writing.

E4.9.5. If a complaint concerning a program or activity is filed with a DoD Component that does not have jurisdiction over it, the DoD Component shall refer the

complaint to the ASD(MRA&L), or designee, and advise the complainant in writing of such referral. The ASD(MRA&L), or designee, then shall refer the complaint to the appropriate DoD Component and so notify the complainant in writing.

#### E4.10. INVESTIGATION BY THE DoD COMPONENTS

E4.10.1. The DoD Components shall investigate complaints that involve recipients and that meet the standards described in section E4.9., above, unless good cause for not investigating is stated in a written notification of the disposition of the complaint provided to the complainant.

E4.10.2. If an investigation of a complaint is conducted, the DoD Component concerned shall maintain a case record that contains:

E4.10.2.1. The name (last name, first, and middle initial), address (street address, city, State, and zip code), and telephone number of each person interviewed.

E4.10.2.2. Copies, transcripts, or summaries of pertinent documents.

E4.10.2.3. A reference to at least one program or activity conducted by the recipient and receiving Federal financial assistance disbursed by a DoD Component, and a description of the amount and nature of the assistance.

E4.10.2.4. A narrative report of the results of the investigation that contains references to relevant exhibits and other evidence that relates to the alleged violations.

#### E4.11. INVESTIGATIONS BY RECIPIENTS

E4.11.1. A DoD Component may require or permit recipients to investigate complaints alleging violation of this Directive. In such cases, the DoD Component shall:

E4.11.1.1. Ensure that the recipient investigates the complaints in accordance with the standards, procedures, and requirements prescribed in section E4.10., above.

E4.11.1.2. Require the recipient to submit a written report of each complaint and investigation to the DoD Component.

E4.11.1.3. Retain a review responsibility over the investigation and disposition of each complaint.

E4.11.1.4. Ensure that each complaint investigation is completed within 180-calendar days of the receipt of the complaint by the proper DoD Component, unless an extension of time is granted for good cause by the ASD(MRA&L), or designee.

E4.11.1.5. Require the recipient to maintain a log of all complaints filed against it, as described in paragraph 7.1. of this Directive.

E4.11.2. DoD Components that require or permit complaint investigations to be conducted by recipients shall review recipient complaint investigations pursuant to this section and section E4.12., below.

#### E4.12. RESULTS OF INVESTIGATIONS

E4.12.1. Within 180 days of the receipt of a complaint, the DoD Component, recipient, or the ASD(MRA&L), or designee, shall give written notification:

E4.12.1.1. Of the disposition of the complaint to the complainant and, as the case may be, to the recipient or the DoD Component.

E4.12.1.2. To the complainant that within 30-calendar days of receipt of the written notification, the complainant may request that the ASD(MRA&L), or designee, review the findings in the notification pursuant to section E4.13., below.

E4.12.2. If the complaint investigation results in a determination by the DoD Component that a recipient is not complying with this Directive, the DoD Component shall proceed as prescribed in sections E4.14. through E4.22., below. If the DoD Component determines that the recipient is in compliance, the DoD Component shall submit the complete case file to the ASD(MRA&L), or designee, within 15-calendar days after the notification of the disposition of the investigation to the complainant.

#### E4.13. REVIEWING COMPLETED INVESTIGATIONS

E4.13.1. The ASD(MRA&L), or designee, may review all completed investigations.

E4.13.2. The ASD(MRA&L), or designee, shall review the results of any investigation of a complaint if the complainant requests such a review pursuant to subparagraph E4.12.1.2., above.

E4.13.3. After reviewing the results of an investigation, the ASD(MRA&L), or designee, may:

E4.13.3.1. Find that no further investigation is necessary and approve the results of the investigation;

E4.13.3.2. Request further investigation by the DoD Component; or

E4.13.3.3. Require the DoD Component to take appropriate corrective action.

E4.14. EFFECTING COMPLIANCE

E4.14.1. When a compliance review or complaint investigation indicates that a recipient has violated this Directive, the applicable DoD Component's supplementary guidelines, or the assurances executed pursuant to section E4.2., above, the responsible DoD Component or the ASD(MRA&L), or designee, shall attempt to effect compliance in accordance with sections E4.15. and E4.16., below. The inability of a DoD Component to comply with any time frame prescribed by this Directive does not relieve a recipient of the responsibility for compliance with this Directive.

E4.14.2. The DoD Component may require, when necessary to overcome the effects of discrimination in violation of this Directive, a recipient to take remedial action:

E4.14.2.1. With respect to handicapped persons who are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.

E4.14.2.2. With respect to handicapped persons who would have been participants in the recipient's program or activity had the discrimination not occurred.

E4.14.2.3. With respect to handicapped persons presently in the recipient's program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

E4.15. WRITTEN NOTICE

After evaluating the investigative report, the DoD Component shall issue to the recipient and, pursuant to paragraph E4.14.2., above, to the ASD(MRA&L), or designee, a written notice that:

E4.15.1. Describes the apparent violation and the corrective actions necessary to achieve compliance.

E4.15.2. Extends an offer to meet informally with the recipient.

E4.15.3. Informs the recipient that failure to respond to the notice within 15-calendar days of its receipt shall result in the initiation of enforcement procedures described in sections E4.18. through E4.22., below.

E4.16. ATTEMPTING TO ACHIEVE VOLUNTARY COMPLIANCE BY  
RECIPIENTS

E4.16.1. If a DoD Component issues a notice pursuant to section E4.15., above, the DoD Component shall attempt to meet with the recipient and shall attempt to persuade it to take the steps necessary to achieve compliance with this Directive.

E4.16.2. If a recipient agrees to take remedial steps to achieve compliance, the DoD Component shall require that the agreement be in writing and:

E4.16.2.1. Be signed by the Head of the DoD Component concerned, or designee, and by the principal official of the recipient.

E4.16.2.2. Specify the action necessary to achieve compliance.

E4.16.2.3. Be made available to the public upon request.

E4.16.2.4. Be subject to the approval of the ASD(MRA&L), or designee.

E4.16.3. If satisfactory adjustment or a written agreement has not been achieved within 60-calendar days of the recipient's receipt of the notice issued pursuant to section E4.15., above, the DoD Component shall notify the ASD(MRA&L), or designee, and state the reasons therefore.

E4.16.4. The DoD Component shall initiate the enforcement actions prescribed in sections E4.18. through E4.22., below, if:

E4.16.4.1. The recipient does not respond to a notice pursuant to section E4.15., above, within 15-calendar days of its receipt and satisfactory adjustments are not made within 45-calendar days of the date of the recipient's response; or

E4.16.4.2. The DoD Component or the ASD(MRA&L) determines at any time within 90 days after the recipient receives a notice pursuant to section E4.15., above, that, despite reasonable efforts, it is not likely that the recipient will comply promptly and voluntarily.

E4.16.5. If, pursuant to paragraph E4.16.4., above, the DoD Component initiates enforcement action, it also shall continue its attempts to persuade the recipient to comply voluntarily.

E4.17. IMPOSING SANCTIONS

E4.17.1. Sanctions Available. If a DoD Component has taken action pursuant to sections E4.15. and E4.16., above, the DoD Component may, by order, subject to paragraphs E4.17.2. and E4.17.3., below:

E4.17.1.1. Terminate, suspend, or refuse to grant or continue assistance to such recipient.

E4.17.1.2. Refer the case to the Department of Justice for the initiation of enforcement proceedings at a Federal, State, or local level.

E4.17.1.3. Pursue any remedies under State or local law.

E4.17.1.4. Impose other sanctions upon consultation with the ASD(MRA&L), or designee.

E4.17.2. Terminating, Suspending, or Refusing to Grant or Continue Assistance. A DoD Component may not terminate or refuse to grant or continue Federal financial assistance unless:

E4.17.2.1. Such action has been approved by the Secretary of Defense.

E4.17.2.2. The DoD Component has given the recipient an opportunity for a hearing pursuant to the procedures set out in section E4.18., below, and a finding of non-compliance has resulted.

E4.17.2.3. Thirty-calendar days have elapsed since the Secretary of Defense has filed a written report describing the violation and action to be taken with the committees of the House of Representatives and Senate that have jurisdiction over the program or activity in which the violation of this Directive exists.

E4.17.2.4. Such action is limited to affect only the particular activity or program, or portion thereof, of the recipient where the violation exists.

E4.17.3. Other Sanctions. A DoD Component may not impose the sanctions set out in subparagraphs E4.17.1.3. and E4.17.1.4., above, unless:

E4.17.3.1. The DoD Component has given the recipient an opportunity for a hearing pursuant to section E4.18., below, and a finding of noncompliance has resulted.

E4.17.3.2. The action has been approved by the Secretary of Defense.



E4.17.3.3. Ten-calendar days have elapsed since the mailing of a notice informing the recipient of its continuing failure to comply with this Directive, the action necessary to achieve compliance, and the sanction to be imposed.

E4.17.3.4. During those 10-calendar days the DoD Component has made additional efforts to persuade the recipient to comply.

#### E4.18. HEARINGS FOR RECIPIENTS

E4.18.1. General. When, pursuant to subparagraph E4.17.2.2., above, an opportunity for a hearing is given to a recipient, the DoD Component involved shall follow the procedures prescribed in paragraphs E4.18:2. through E4.18.6., below.

E4.18.2. Notice. The DoD Component concerned shall notify the recipient of the opportunity for a hearing by registered or certified mail, return receipt requested, when the recipient denies a tentative finding of noncompliance with this Directive.

E4.18.2.1. The DoD Component shall ensure that the notice:

E4.18.2.1.1. Describes the proposed sanctions to be imposed.

E4.18.2.1.2. Cites the section of this Directive under which the proposed action is to be taken.

E4.18.2.1.3. States the name and office of the DoD Component official who is responsible for conducting the hearing (hereafter referred to as the "responsible DoD official").

E4.18.2.1.4. Outlines the issues to be decided at the hearing.

E4.18.2.1.5. Advises the recipient either of a date, not less than 20-calendar days after the date that the notice is received, by which the recipient may request that the matter be scheduled for a hearing, or of a reasonable time and place of a hearing that is subject to change for good cause shown.

E4.18.2.2. When a time and place for a hearing are set, the DoD Component shall give the recipient and the complainant, if any, reasonable notice of such time and place.

E4.18.3. Waiver of a Hearing. A recipient may waive a hearing and submit to the responsible DoD official, in writing, information or arguments on or before the date stated pursuant to subparagraph E4.18.2.1.5., above.

E4.18.3.1. A recipient waives its right to a hearing if it fails to request a hearing on or before a date stated pursuant to subparagraph E4.18.2.1.5., above, or fails to appear at a hearing that has been scheduled pursuant to that subparagraph.

E4.18.3.2. If a recipient waives its right to a hearing under this section, the responsible DoD official shall decide the issues and render a final decision that is based on the information available and that conforms to the requirements of paragraph E4.19.4., below.

E4.18.4. Hearing Examiner. Hearings shall be conducted by the responsible DoD official or by a hearing examiner designated by the official, provided that the hearing examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who is admitted to practice law before a Federal court or the highest court of a State, territory, commonwealth, or the District of Columbia.

E4.18.5. Right to Counsel. In all proceedings under this section, the recipient and the DoD Component may be represented by counsel. The representation of the recipient will not be at U.S. Government expense.

E4.18.6. Procedures. Hearings authorized under this section shall be subject to the following:

E4.18.6.1. Hearings shall be open to the public.

E4.18.6.2. Formal rules of evidence will not apply. The DoD Component concerned and the recipient shall be entitled to introduce all relevant evidence on the issues stated in the notice of hearing issued pursuant to paragraph E4.18.2., above, and those designated by the responsible DoD official or the hearing examiner at the outset of or during the hearing. The responsible DoD official or hearing examiner, however, may exclude irrelevant, immaterial, or repetitious evidence.

E4.18.6.3. All witnesses may be examined or cross-examined, as the case may be, by each party.

E4.18.6.4. All parties shall have the opportunity to examine all evidence differed or admitted for the record.

E4.18.6.5. A transcript of the proceedings shall be maintained in either electronic or typewritten form and made available to all parties.

E4.19. DECISIONS

E4.19.1. Initial or Proposed Decisions by a Hearing Examiner. If a hearing is conducted by a hearing examiner who is designated by the responsible DoD official pursuant to paragraph E4.18.4., above, the hearing examiner shall either:

E4.19.1.1. Make an initial decision, if so authorized, that conforms to the requirements of paragraph E4.19.4., below; or

E4.19.1.2. Certify the entire record and submit to the responsible DoD official recommended findings and a proposed decision.

E4.19.2. Review of Initial Decisions. Initial decisions made by a hearing examiner pursuant to subparagraph E4.19.1.1., above, shall be reviewed as follows:

E4.19.2.1. A recipient may file exceptions to an initial decision within 30-calendar days of receiving notice of such initial decision. Reasons shall be stated for each exception.

E4.19.2.2. If the recipient does not file exceptions pursuant to subparagraph E4.19.2.1., above, the responsible DoD official may notify the recipient within 45-calendar days of the initial decision that the responsible DoD official will review the decision.

E4.19.2.3. If exceptions are filed pursuant to subparagraph E4.19.2.1., above, or a notice of review is issued pursuant to subparagraph E4.19.2.2., above, the responsible DoD official shall review the initial decision and, after giving the recipient reasonable opportunity to file a brief or other written statement of its contentions, issue a final decision that addresses each finding and conclusion in the initial decision and each exception, if any.

E4.19.2.4. If the exceptions described in subparagraph E4.19.2.1., above, are not filed and the responsible DoD official does not issue the notice of review described in subparagraph E4.19.2.2., above, the initial decision of the hearing examiner shall constitute the final decision of the responsible DoD official.

E4.19.3. Decisions by the Responsible DoD Official Who Conducts a Hearing or Receives a Certified Record. If a hearing examiner who is designated by the responsible DoD official certifies the entire record and submits recommended findings and a proposed decision to the responsible DoD official pursuant to subparagraph E4.19.1.2., above, or if the responsible DoD official conducts the hearing, after giving the recipient a reasonable opportunity to file a brief or other written statement of its contentions, the responsible DoD official shall render a final decision that conforms to paragraph E4.19.4., below.

E4.19.4. Contents of Decisions. Each decision of a hearing examiner or responsible DoD official shall state all findings and conclusions and identify each violation of this Directive. The final decision may contain an order pursuant to section E4.17., above, providing for the suspension or termination of or refusal to grant or continue all or some of the Federal financial assistance under the program or activity involved and contain terms, conditions, and other provisions that are consistent with and intended to achieve compliance with this Directive.

E4.19.5. Notice of Decisions and Certifications. The responsible DoD official shall provide a copy of any certified record of a hearing and any initial or final decision to the recipient and the complainant, if any.

E4.19.6. Review by the Secretary of Defense. The responsible DoD official shall transmit promptly any final decision that orders a suspension, termination, or denial of Federal financial assistance through the ASD(MRA&L) to the Secretary of Defense. The Secretary may:

E4.19.6.1. Approve the decision;

E4.19.6.2. Vacate the decision; or

E4.19.6.3. Remit or mitigate any sanction imposed.

#### E4.20. RESTORING ELIGIBILITY FOR FINANCIAL ASSISTANCE

E4.20.1. A recipient that is affected adversely by a final decision issued under section E4.19., above, may at any time request the responsible DoD official to restore fully its eligibility to receive Federal financial assistance.

E4.20.2. If the responsible DoD official determines that the information supplied by the recipient demonstrates that it has satisfied the terms and conditions of the order entered pursuant to section E4.19., above, and that is complying with and has provided reasonable assurance that it will continue to comply with this Directive, the responsible DoD official shall restore such eligibility immediately.

E4.20.3. If the responsible DoD official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing that states why it believes the responsible DoD official erred in denying the request. Following such a written request, the recipient shall be given an expeditious hearing under rules of procedure issued by the responsible DoD official to determine whether the requirements described in paragraph E4.20.2., above, have been met. While any such proceedings are pending, the sanctions imposed by the order issued under section E4.19., above, shall remain in effect.

E4.21. INTERAGENCY COOPERATION AND DELEGATION

E4.21.1. When several recipients are receiving assistance for the same or similar purposes from a DoD Component and another Federal Agency, the DoD Component shall notify the ASD(MRA&L), or designee. Such notification shall be in writing and shall contain:

E4.21.1.1. A description of the programs and activities involved.

E4.21.1.2. A statement of the amount of money expended on the programs and activities in the previous and current fiscal year by the DoD Component and the Agency.

E4.21.1.3. A list of the known primary recipients.

E4.21.2. The ASD(MRA&L), or designee, shall attempt to negotiate with the Federal Agency a written delegation agreement that designates the Agency or the DoD Component as the primary Agency for purposes of ensuring compliance with Section 504 of P.L. 93-112, as amended, and this Directive, depending upon which of them administers a larger financial assistance program with the common recipients and other relevant factors. If necessary, the agreement shall establish procedures to ensure the enforcement of Section 504 of P.L. 93-112, as amended, and this Directive. The ASD(MRA&L), or designee, shall provide written notification to recipients of an agreement reached under this paragraph.

E4.21.3. When several recipients are receiving assistance for the same or similar purposes from two or more DoD Components, the DoD Components may negotiate a proposed written delegation agreement that:

E4.21.3.1. Assigns responsibility for ensuring that the recipient complies with this Directive to one of the DoD Components.

E4.21.3.2. Provides for the notification to recipients and the responsible program officials of the DoD Components involved of the assignment of enforcement responsibility.

E4.21.4. No delegation agreement reached in accordance with paragraph E4.21.3., above, shall be effective until it is approved by the ASD(MRA&L), or designee.

E4.21.5. When possible, existing delegation agreements relating to Title VI of the Civil Rights Act of 1964 shall be amended to provide for the enforcement of this Directive.

E4.21.6. Any DoD Component conducting a compliance review or investigating a complaint of an alleged violation by a recipient shall notify any other affected Agency or DoD Component through the ASD(MRA&L), or designee, upon discovery that the

Agency or DoD Component has jurisdiction over the program or activity in question and shall subsequently inform it of the finding made. Such reviews or investigations may be conducted on a joint basis.

E4.21.7. When a compliance review or complaint investigation under this Directive reveals a possible violation of Executive Order 11246, Titles VI or VII of the Civil Rights Act of 1964, or any other Federal law, the DoD Component shall notify the appropriate Agency, through the ASD(MRA&L), or designee.

E4.22. COORDINATION WITH SECTIONS 502 AND 503

E4.22.1. DoD Components shall use DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, in developing requirements for the accessibility of facilities. If DoD Components encounter issues with respect to Section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by these publications, the ASD(MRA&L), or designee, may be consulted. If necessary, the ASD(MRA&L), or designee, shall consult with the Architectural and Transportation Barriers Compliance Board in resolving such problems.

E4.22.2. The DoD Components may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

E4.22.3. The DoD Components shall coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board and shall notify the ASD(MRA&L), or designee, of such coordination.

E4.22.4. If a recipient is also a Federal contractor subject to Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations thereunder (41 CFR 60-741) and if a DoD Component has reason to believe that the recipient is in violation thereof, the DoD Component shall coordinate enforcement actions with the Department of Labor, Office of Federal Contract Compliance Programs. The DoD Component shall notify the ASD(MRA&L), or designee, of such coordination.

E5. ENCLOSURE 5

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN PROGRAMS AND  
ACTIVITIES CONDUCTED BY THE DEPARTMENT OF DEFENSE

E5.1. SUPPLEMENTARY GUIDELINES

E5.1.1. Whenever necessary, the ASD(MRA&L), or designee, shall publish supplementary guidelines for programs and activities that are conducted by the DoD Components and that are subject to this Directive. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review.

E5.1.2. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines described in this section current and accurate. When a DoD Component head determines that a program or activity should be added to or deleted from the guidelines, that official shall notify the ASD(MRA&L), or designee, in writing.

E5.2. STAFF RESPONSIBILITIES

The ASD(MRA&L), or designee, shall determine DoD Component compliance with this Directive as it pertains to programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.3. FILING OF COMPLAINTS

E5.3.1. Complaints of discrimination in a program or activity conducted by a DoD Component may be filed directly with the ASD(MRA&L), or designee.

E5.3.2. The DoD Components shall develop procedures, such as posters or other devices, to notify participants in the programs and activities listed in paragraph E1.1.3. of enclosure 1 of their right to be free of discrimination because of handicap in those programs and activities and of their right to file complaints of discrimination with the ASD(MRA&L), or designee.

#### E5.4. INVESTIGATIONS OF COMPLAINTS

E5.4.1. The ASD(MRA&L), or designee, shall investigate complaints of discrimination in programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.4.2. A case record of each investigation shall be compiled in accordance with paragraph E4.10.2. of enclosure 4.

#### E5.5. RESULTS OF INVESTIGATIONS

If the complaint investigation results in a determination by the ASD(MRA&L), or designee, that a DoD Component's program or activity is not complying with enclosure 4 of this Directive, the ASD(MRA&L), or designee, shall proceed as prescribed in sections E4.14. through E4.22. of enclosure 4. Hearings prescribed under section E4.18. of enclosure 4 of this Directive, however, need not be conducted. If the ASD(MRA&L), or designee, determines that the DoD Component is in compliance, the ASD(MRA&L), or designee, shall notify the complainant within 15-calendar days of such determination.

#### E5.6. WRITTEN NOTICE

If an investigative report concludes that there has been a violation of this Directive in a program or activity conducted by a DoD Component and the ASD(MRA&L), or designee, accepts that conclusion, that official shall issue to the Head of the DoD Component a written notice describing the apparent violation, the corrective actions necessary to achieve compliance, and a suspense date for completion of the corrective actions.

#### E5.7. EFFECTING COMPLIANCE

When necessary to overcome the effects of discrimination in violation of this Directive, the ASD(MRA&L), or designee, may require a DoD Component to take remedial action similar to that in paragraph E4.14.2. of enclosure 4.

#### E5.8. EMPLOYMENT

DoD Components that conduct Federal programs or activities covered by this Directive that involve employment of civilian persons to conduct such a program or activity must comply with Section 501 of the Rehabilitation Act of 1973, as amended, and the implementing rules and regulations of the EEOC.





## Department of Defense

# DIRECTIVE

NUMBER 5500.11

May 27, 1971

Certified Current as of November 21, 2003

---

---

Incorporating Change 1, August 15, 1972  
ASD(M&RA)

SUBJECT: Nondiscrimination in Federally Assisted Programs

Reference: (a) Public Law 88-352, "The Civil Rights Act of 1964," 78 Stat. 241, July 2, 1964

### 1. PURPOSE

The purpose of this Directive is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

### 2. DEFINITIONS

2.1. Component means the Office of the Secretary of a Military Department or a Defense Agency.

2.2. Responsible Department official means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component, for the administration of the law extending such assistance.

2.3. The term United States means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

2.4. The term Federal financial assistance includes:

2.4.1. Grants and loans of Federal funds;

2.4.2. The grant or donation of Federal property and interests in property;

2.4.3. The detail of Federal personnel;

2.4.4. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

2.4.5. Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

2.5. The term program includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions that must be met in order to receive the Federal financial assistance and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

2.6. The term facility includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

2.7. The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

2.8. The term primary recipient means any recipient who is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

2.9. The term applicant means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

### 3. APPLICABILITY

This Directive applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the Federally assisted programs and activities listed in enclosure 1 of this Directive. *This Directive applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This Directive does not apply to:*

3.1. *Any Federal financial assistance by way of insurance guaranty contracts;*

3.2. *Money paid, property transferred, or other assistance extended under any such program, before January 7, 1965;*

3.3. *Any assistance to any individual who is the ultimate beneficiary under any such program; or*

3.4. Any employment practice, under any such program, of any employer, employment agency, or labor organization, except as noted in subparagraph 4.2.5., below. The fact that a program or activity is not listed in enclosure 1 shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

### 4. POLICY

4.1. General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

#### 4.2. Specific Discriminatory Actions Prohibited

4.2.1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

4.2.1.1. Deny an individual any service, financial aid, or other benefit provided under the program;

4.2.1.2. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

4.2.1.3. In determining the site or location of facilities, make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Directive applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Directive;

4.2.1.4. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

4.2.1.5. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

4.2.1.6. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

4.2.1.7. *Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.*

4.2.1.8. *Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.*

4.2.2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

4.2.3. As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4.2.4.

4.2.4.1. *In administering a program regarding that the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.*

4.2.4.2. *Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions that resulted in limiting participation by persons of a particular race, color, or national origin.*

4.2.5. *Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising; employment, layoff or termination; upgrading, demotion or transfer; rates of pay or other forms of compensation; and use of facilities), to the extent necessary to ensure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a DoD Component pursuant to this provision with respect to a State or local agency subject to the Standards for a Merit System of Personnel Administration, 45 C.F.R. 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.*

4.2.6. *The enumeration of specific forms of prohibited discrimination, in this paragraph does not limit the generality of the prohibition in paragraph 4.1. of this section.*

## 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower and Reserve Affairs) shall be responsible for insuring that the policies of this Directive are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of the Defense.

5.2. The Secretary of each Military Department is responsible for implementing this Directive with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower and Reserve Affairs) is responsible for similarly implementing this Directive with respect to all other

components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with paragraph 2.2. of this Directive.

5.3. The Assistant Secretary of Defense (Manpower and Reserve Affairs) or, after consultation with the Assistant Secretary of Defense (Manpower and Reserve Affairs), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs) may assign to officials of other Departments or Agencies of the Government, with the consent of such Departments or Agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this Directive (other than responsibility for final decision as provided in section 11.), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this Directive to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Agency.

## 6. ASSURANCES REQUIRED

### 6.1. General

6.1.1. Every application for Federal financial assistance to carry out a program to which this Directive applies, except a program to which paragraph 6.2. applies and every application for Federal financial assistance to provide a facility shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this Directive.

6.1.2. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

Any such assurance shall include provisions that give the United States a right to seek its judicial enforcement.

6.1.3. In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. In programs receiving Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Directive shall extend to any facility located wholly or in part in such space.

6.1.4. The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

6.2. Continuing State Programs. Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this Directive applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application:

6.2.1. Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this Directive; and

6.2.2. Provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this Directive. In cases of continuing State programs in which applications are not made, the extension of Federal financial assistance shall be subject to the same conditions under this paragraph as if applications had been made.

6.3. Assurances from Institutions

6.3.1. In the case of Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

6.3.2. The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

6.4. Elementary and Secondary Schools. The requirement of paragraph 6.1., 6.2., or 6.3., above, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system:

6.4.1. Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order; or

6.4.2. Submits a plan for the desegregation of such school or school system that the responsible official of the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of the Act and this Directive, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said Department officer may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act or this Directive within the earliest practicable time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of said order.



## 7. COMPLIANCE INFORMATION

7.1. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

7.2. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. *In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.*

7.3. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

7.4. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

## 8. CONDUCT OF INVESTIGATIONS

8.1. Periodic Compliance Reviews. The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this Directive.

8.2. Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this Directive may by himself or by a representative file with the responsible Department official a written complaint.

*A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.*

8.3. Investigations. The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Directive. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Directive occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this Directive.

8.4. Resolution of Matters

8.4.1. If an investigation pursuant to paragraph 8.3. indicates a failure to comply with this Directive, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in section 9. of this Directive.

8.4.2. If an investigation does not warrant action pursuant to subparagraph 8.4.1., the responsible Department official will so inform the recipient and the complainant, if any, in writing.

8.5. Intimidatory or Retaliatory Acts Prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this Directive, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Directive. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this Directive, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

9. PROCEDURE FOR EFFECTING COMPLIANCE

9.1. General. If there appears to be a failure or threatened failure to comply with this Directive, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Directive may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to:

9.1.1. A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any

law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

9.1.2. Any applicable proceedings under State or local law.

9.2. Noncompliance with Section 6. If an applicant fails or refuses to furnish an assurance required under section 6., or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph 9.3. of this section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefore approved prior to the effective date of this Directive.

9.3. Termination of or Refusal to Grant or to Continue Federal Financial Assistance. Except as provided in paragraph 9.2. no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

9.3.1. The responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

9.3.2. There has been an express finding, after opportunity for a hearing (as provided in section 10 of this Directive), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Directive;

9.3.3. The action has been approved by the Secretary of Defense pursuant to section 11. of this Directive; and

9.3.4. The expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

9.4. Other Means Authorized by Law. No action to affect compliance by any other means authorized by law shall be taken until:

9.4.1. The responsible Department official has determined that compliance cannot be secured by voluntary means;

9.4.2. The action has been approved by the Assistant Secretary of Defense (Manpower and Reserve Affairs);

9.4.3. The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

9.4.4. The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this Directive and to take such corrective action as may be appropriate.

## 10. HEARINGS

10.1. Opportunity for Hearing. Whenever an opportunity for a hearing is required by section 9. of this Directive, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

10.1.1. Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing; or

10.1.2. Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing and submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under Section 602 of the Act and paragraph 9.3. of this Directive and consent to the making of a decision on the basis of such information as is available.

10.2. Time and Place of Hearing. Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, DC at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

10.3. Hearing Examiner. The examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

10.4. Right to Counsel. In all proceedings under this section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

10.5. Procedures

10.5.1. The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

10.5.2. Technical rules of evidence shall not apply to hearings conducted pursuant to this Directive, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

10.6. Consolidated or Joint Hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this Directive with respect to two or more programs to which this Directive applies, or noncompliance with this Directive and the regulations of one or more other Federal Departments or Agencies issued under Title VI of the Act, the Assistant Secretary of Defense (Manpower and Reserve Affairs), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs) after consultation with the Assistant Secretary of Defense (Manpower and Reserve Affairs) may, by agreement with such other Departments or Agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of appropriate procedures not inconsistent with this Directive. Final decisions in such cases, insofar as this Directive is concerned, shall be made in accordance with section 11.

11. DECISIONS AND NOTICES

11.1. Decision by Person Other Than the Responsible Department Official. If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may

within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefore. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

11.2. Decisions on Record or Review by the Responsible Department Official.

Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph 11.1. or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

11.3. Decisions on Record Where a Hearing is Waived. Whenever a hearing is waived pursuant to paragraph 10.1. a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

11.4. Rulings Required. Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Directive with which it is found that the applicant or recipient has failed to comply.

11.5. Approval by the Secretary of Defense. Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this Directive or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

11.6. Contents of Orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Directive, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Directive, or to have otherwise failed to comply with this Directive, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Directive.

11.7. Post-termination Proceedings

11.7.1. An applicant or recipient adversely affected by an order issued under paragraph 11.6. shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or it brings itself into compliance with this Directive and provides reasonable assurance that it will fully comply with this Directive.

11.7.2. Any applicant or recipient adversely affected by an order entered pursuant to paragraph 11.6., above, may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph 11.7.1., above. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

11.7.3. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph 11.7.1., above. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph 11.6. shall remain in effect.

12. JUDICIAL REVIEW

Action taken pursuant to Section 602 of the Act is subject to judicial review as provided in Section 603 of the Act.

13. EFFECT ON OTHER ISSUANCES

13.1. All issuances heretofore issued by any officer of the Department of Defense or its components that impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this Directive applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Directive, except that nothing in this Directive shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Directive.

13.2. Nothing in this Directive, however, shall be deemed to supersede any of the following (including future amendments thereof):

13.2.1. Executive Orders 10925, 11114, and 11246 and issuances thereunder;

13.2.2. The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 28 F.R. 734; or

13.2.3. Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this Directive is inapplicable, or prohibit discrimination on any other ground.

#### 14. IMPLEMENTATION

The Secretary of each Military Department shall submit regulations implementing this Directive to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

#### 15. EFFECTIVE DATE AND CANCELLATION

This Directive shall become effective on the 30th day following the date of its publication in the Federal Register. DoD Directive 5500.11, December 28, 1964 is superseded and canceled.

A handwritten signature in black ink, appearing to read "David Patrick", is written over a horizontal line.

Deputy Secretary of Defense

Enclosures - 1

E1. Federal Financial Assistance to Which This Directive Applies



E1. ENCLOSURE 1

FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS DIRECTIVE APPLIES

E1.1.1. The Army and Air National Guard (Title 32, United States Code).

E1.1.2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101 - 1119; 10 United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).

E1.1.3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).

E1.1.4. National Defense Cadet Corps Program (10 United States Code 3540(b), 4651).

E1.1.5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281(e), (f)).

E1.1.6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281 (h)).

E1.1.7. Office of Civil Defense program (with Public Health Service) for development of instructional materials on medical self-help (50 United States Code App. 2281(e), (f)).

E1.1.8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e)).

E1.1.9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281 (i), 2285).

E1.1.10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281(h)).

E1.1.11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281(e)).

E1.1.12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

E1.1.13. Navy Science Cruiser Program (Sec Nav Instruction 5720. 19A).

E1.1.14. Civil Air Patrol (10 United States Code 9441).

E1.1.15. Research grants made under the authority of Public Law 85-934 (42 U.S.C. 1892).

E1.1.16. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of Public Law 85-934 (42 U.S.C. 1891).

E1.1.17. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (33 United States Code 426).

E1.1.18. Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores and beaches (33 United States Code 426 e-h).

E1.1.19. Public park and recreational facilities at water resource development projects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water Project Recreation Act, Public Law 89-72, 79 Stat. 218, July 9, 1965).

E1.1.20. Payment to States of proceeds of lands acquired by the United States for flood control, navigation, and allied purposes (33 United States Code 701-c-3).

E1.1.21. Grants of easements without consideration, or at a nominal or reduced consideration, on lands under the control of the Department of the Army at water resource development projects. (33 United States Code 558c and 702 d-1; 10 United States Code 2668 and 2669; 43 United States Code 961; 40 United States Code 319).

E1.1.22. Army Corps of Engineers assistance in the construction of small boat harbor projects (33 United States Code 540 and 577, and 47 Stat. 42, February 10, 1932).

E1.1.23. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (33 United States Code 701r).

E1.1.24. Assistance to States and local interests in the development of water supplies for municipal and industrial purposes in connection with Army Corps of Engineers reservoir projects (Water Supply Act of 1958, 43 United States Code 390b).

E1.1.25. Army Corps of Engineers contracts for remedial works under authority of Section III of Act of July 3, 1958 (33 United States Code 633).

**EXHIBIT G**  
**REQUEST FOR APPROVAL OF CONTRACT AND BOND COUNSEL OPINION**

To: Department of Natural Resources ("Owner")  
\_\_\_\_\_ ("Bond Counsel")

From: Central Group Management, LLC ("Operator")

RE: [Name of Agreement]

Pursuant to Section 3.8.5 of the Hotel Management Agreement (the "Agreement"), Operator submits the following contract(s) for approval by the Owner and Bond Counsel:

1. [Name of Contract & Parties]

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Operator

**EXHIBIT H**  
**REQUEST FOR APPROVAL OF CONTRACT**

To: Department of Natural Resources ("Owner")

From: Central Group Management, LLC ("Operator")

RE: [Name of Agreement]

Pursuant to Section 3.8.2 of the Hotel Management Agreement (the "Agreement"), Operator submits the following contract(s) for approval by the Owner as an Excluded Contract pursuant to subsection \_\_\_\_ of Section 3.8.4.

1. [Name of Contract & Parties]

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Operator

**EXHIBIT I**  
**PROPRIETARY EMPLOYEE POLICIES**

[List as approved by Owner]

**EXHIBIT J**  
**BONUS PLAN**

The Bonus Pool will be an Operating Expense and shall be calculated as an amount up to and including 9% of the total payroll and wages, excluding taxes and benefits, paid to Hotel Employees during a Fiscal Year, to the extent that such amounts are available after paying all debt service requirements and mandatory payments under the Indenture. The bonus pool will be distributed to those Hotel Employees that work at Honey Creek Resort State Park, and no Corporate Management Staff of the Operator will be included in the bonus pool. The allocation to the Hotel Employees at Honey Creek Resort State Park will be based on the relative contribution (revenue, expense control, over all cooperation) of each Hotel Employee and their department for generating the funds available for debt services. The calculation and allocation of the bonus pool will be submitted to the Owner for its review and approval along with an explanation for each allocation, prior to the distribution being made to the Hotel Employees. The Owner shall have the sole discretion to cease the Bonus Pool or reduce the amount available for the Bonus Pool.

**EXHIBIT K  
GUARANTY**

## GUARANTY

THIS GUARANTY, is made and given effective the 15<sup>th</sup> day of January, 2008, by Roberts H. Pace, Jr., and Jean M. Pace, jointly and severally, herein "Guarantor" (even though more than one), in favor of Iowa Department of Natural Resources, an executive branch department of the State of Iowa, with its principal offices located at Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034 herein "Owner."

## RECITALS

A. Owner proposes to design, plan, develop, bid, and construct a destination State Park known as Honey Creek Resort State Park ("Honey Creek Resort") in Appanoose County, Iowa, and has selected Central Group Management, LLC, with its principal offices located at St. Cloud, Minnesota herein "Operator" to provide management services for the operation of the Honey Creek Resort State Park.

B. Owner is desirous of utilizing the services and experience of Operator in connection with the operation and management of the Honey Creek Resort including pre-opening services, and Operator desires to render such services, all upon the terms and conditions set forth in that certain Hotel Management Agreement of even date with this Guaranty, herein the "Hotel Management Agreement."

C. It is a condition precedent to the obligation of Owner to enter into the Hotel Management Agreement that this Guaranty be executed and delivered by Guarantor.

NOW, THEREFORE, in consideration of the Hotel Management Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees with Owner as follows:

1. The Guaranty.

1.1 Guarantor hereby absolutely and unconditionally guarantees to Owner the following (collectively referred to herein as the "Obligations"):

1.1.1 the prompt payment of any and all present and future debts, liabilities and obligations owed by Operator under this Agreement, including all indemnification obligations of Operator under the Hotel Management Agreement; and

1.1.2 the full and timely performance by Operator of all of its obligations under the Hotel Management Agreement.



1.2 This Guaranty shall be a joint and several obligation of each Person who signs this Guaranty, or a counterpart hereof. No act or thing need occur to establish the liability of the Guarantor, and no act or thing, except full payment and discharge of all obligations, or the written release of Owner as provided below, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the Guarantor.

1.3 LIABILITY UNDER THIS GUARANTY SHALL COMMENCE IMMEDIATELY ON THE OCCURRENCE OF ANY EVENT OF DEFAULT OF THE HOTEL MANAGEMENT AGREEMENT, NEVERTHELESS, OWNER SHALL NOT EXERCISE ITS RIGHTS AND REMEDIES HEREUNDER AGAINST GUARANTOR, INDIVIDUALLY OR TOGETHER, FOR ANY EVENT OF DEFAULT FOR WHICH DEFAULT THE HOTEL MANAGEMENT AGREEMENT REQUIRE LENDER TO GIVE OPERATOR A NOTICE OF DEFAULT AND OPPORTUNITY TO CURE, UNLESS AND UNTIL SUCH NOTICE OF DEFAULT IS GIVEN TO GUARANTOR AS WELL AS OPERATOR, AND SUCH EVENT OF DEFAULT IS NOT TIMELY CURED BY OPERATOR OR OTHER PERSON WITHIN THE TIME PROVIDED IN THE HOTEL MANAGEMENT AGREEMENT.

1.4 NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THIS GUARANTY, THE INDIVIDUAL AND COMBINED LIABILITY OF THE GUARANTOR, JOINTLY AND/OR SEVERALLY, SHALL BE AND HEREBY IS LIMITED TO A PRINCIPAL AMOUNT EQUAL TO \$2,000,000.00, PLUS ACCRUED INTEREST ON SUCH GUARANTEED AMOUNT, LATE CHARGES (IF ANY), AND ALL ATTORNEYS' FEES, COLLECTION COSTS AND ENFORCEMENT EXPENSES REFERABLE THERETO AS PROVIDED IN THE HOTEL MANAGEMENT AGREEMENT THE OWNER MAY APPLY ANY SUMS RECEIVED BY OR AVAILABLE TO THE OWNER ON ACCOUNT OF THE OBLIGATIONS FROM OPERATOR OR ANY OTHER PERSON (INCLUDING ANY OTHER GUARANTOR OF SUCH OBLIGATIONS), FROM THEIR PROPERTIES, OUT OF ANY COLLATERAL SECURITY OR FROM ANY OTHER SOURCE TO PAYMENT OF THE EXCESS.

2. Continuing Guaranty. This Guaranty is an absolute, unconditional, complete and continuing guaranty of payment and performance of the Obligations. The obligations of Guarantor hereunder shall not be released by any action which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a surety or guarantor, other than irrevocable payment and performance in full of the Obligations. No notice of the Obligations or of any renewal or extension thereof need be given to Guarantor.

2.1 Guarantor hereby waives:

2.1.1 presentment, protest, notice of dishonor, nonpayment or nonperformance of any and all of the Obligations; and

2.1.2 notice of acceptance of this Guaranty and notice of any liability to which it may apply;

3. Discharge of Guaranty. Without further action by the Guarantor and upon the payment in full of the Obligations, the Guarantors' liability hereunder shall cease and be discharged, and the Owner shall execute and deliver to the Guarantors an appropriate instrument in writing evidencing the release and discharge of the Guarantors from all liability under the terms hereof.

4. Other Transactions. The liability of the Guarantor shall not be affected or impaired by any of the following acts or things (which the Owner is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this Guaranty, without notice to or approval by the undersigned):

4.1 to amend, extend or supplement the Hotel Management Agreement, to waive compliance by Operator or any other Person with the terms thereof and to settle or compromise any of the Obligations without notice to Guarantor and without affecting the liabilities of Guarantor. No invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security therefor or other recourse with respect thereto shall affect, impair or be a defense to this Guaranty;

4.2 any waiver or indulgence granted to Operator, any delay or lack of diligence in the enforcement of Obligations, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Obligations;

4.3 any full or partial release of, settlement with, or agreement not to sue, Operator or any other guarantor or other person liable in respect of any Obligations;

4.4 any transfer of any Obligations or any evidence thereof;

The liabilities of Guarantor shall not be affected by any failure, delay, neglect or omission on the part of Owner to realize upon any of the obligations of Operator to Owner, or upon any collateral or security for any of the Obligations, nor by the taking by Owner of (or the failure to take) any other guaranty or guaranties to secure the Obligations, nor by the taking by Owner of (or the failure to take or the failure to perfect its security interest in or other lien on) collateral or security of any kind. No act or omission of Owner, shall affect or impair the obligations of Guarantor hereunder. This Guaranty shall continue in full force and effect, both as to the Obligations now existing and/or hereafter created, notwithstanding the release of or extension of time to any other guarantor of the Obligations or any part thereof.

5. Time of the Essence. Time is of the essence with respect to Guarantor's obligations under this Guaranty. If any remedy or right hereby granted shall be found to be unenforceable, such unenforceability shall not limit or prevent enforcement of any other remedy or right hereby granted.

6. Application of Payments. Any and all payments made by Guarantor or by any other Person, and/or the proceeds of any or all collateral or security for any of the Obligations, may be applied by Owner on such items of the Obligations as Owner may elect.

7. Recovery of Payment. If any payment received by Owner and applied to the Obligations is subsequently set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Operator or any other obligor), the Obligations to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such Obligations as fully as if such application had never been made.

8. Operator's Financial Condition. Guarantor is familiar with the financial condition of Operator, and Guarantor has executed and delivered this Guaranty based on Guarantor's own judgment and not in reliance upon any statement or representation of Owner. Owner shall have no obligation to provide Guarantor with any advice whatsoever or to inform Guarantor at any time of Owner's actions, evaluations or conclusions on the financial condition or any other matter concerning Operator.

9. Remedies. All remedies afforded to Owner by this Guaranty are separate and cumulative remedies and no one of such remedies whether or not exercised by Owner, shall limit any of the other remedies available to Owner and shall in no way limit or prejudice any other remedy which Owner may have.

10. Bankruptcy of Operator. The liabilities and obligations of Guarantor under this Guaranty shall not be impaired or affected by the institution by or against Operator or any other Person of any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other similar proceedings for relief under any bankruptcy law or similar law for the relief of debtors. Any discharge of any of the Obligations pursuant to any such bankruptcy or similar law or other law shall not diminish, discharge or otherwise affect in any way the obligations of Guarantor under this Guaranty.

11. Costs and Expenses. Guarantor shall pay or reimburse Owner on demand for all out-of-pocket expenses (including in each case all reasonable fees and expenses of counsel) incurred by Owner arising out of or in connection with the enforcement of this Guaranty against Guarantor.

12. Waivers and Amendments. This Guaranty can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by Owner. A waiver so signed shall be effective only in the specific instance and for the specific purpose given.

13. Notices. Any notice or other communication to any party in connection with this Guaranty shall be in writing and shall be sent by manual delivery, telegram, telex, facsimile transmission, overnight courier or United States mail (postage prepaid) addressed, in the case of Guarantor, at the address specified below his, her or its signature below, and, in the case of Owner,

at the address set forth in the Hotel Management Agreement, or at such other address as such party shall have specified to the other party hereto in writing. All periods of notice shall be measured from the date of delivery thereof if manually delivered, from the date of sending thereof if sent by telegram, telex or facsimile transmission, from the first Business Day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed. Either party may change his, her or its address for notices by a notice given not less than five (5) Business Days prior to the effective date of the change.

14. Guarantor Acknowledgments. Guarantor acknowledges that:

14.1 Guarantor is not insolvent nor will the undersigned become insolvent as a result of the execution and delivery of this Guaranty

14.2 Guarantor's counsel has advised Guarantor in the negotiation, execution and delivery of this Guaranty;

14.3 Owner has no fiduciary relationship to Guarantor; and

14.4 no joint venture exists between Guarantor and Owner.

15. Binding Effect. This Guaranty shall:

15.1 remain in full force and effect until:

15.1.1 irrevocable payment and performance in full of the Obligations, or

15.1.2 the express written release of Guarantor by Owner, and

15.1.3 the expiration of the obligation, if any, of Owner to extend credit accommodations to Operator;

15.2 be binding upon Guarantor; and

15.3 inure to the benefit of, and be enforceable by, Owner and its successors, transferees and assigns.

16. Governing Law and Construction. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event that any proceeding of quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County, Iowa. This provision shall not be construed as waiving any immunity to suit or liability, including, without limitation, sovereign immunity in State or Federal court.

17. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor which, if determined adversely to Guarantor, would have a material adverse effect on the condition of Guarantor or on the ability of Guarantor to perform its obligations under this Guaranty. Guarantor is not in violation of any Governmental Requirement where such violation could reasonably be expected to impose a material liability on Guarantor.

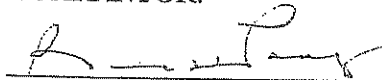
18. Taxes. Guarantor has filed all federal, state and local tax returns required to be filed and has paid or made provision for the payment of all taxes due and payable pursuant to such returns and pursuant to any assessments made against him, or her or any of his or her property other than taxes, fees or charges the amount or validity of which is currently being contested in good faith by appropriate proceedings.

19. Counterparts. This Guaranty may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

20. General. All representations and warranties contained in this Guaranty, or in any other agreement between Guarantor and Owner, shall survive the execution, delivery and performance of this Guaranty and the creation, payment and performance of the Obligations. Captions in this Guaranty are for reference and convenience only and shall not affect the interpretation or meaning of any provision of this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:



Roberts H. Pace, Jr.

Address:

215 Park Ave. Jr. # 200  
St. Cloud, MN 56301

GUARANTOR:



Jean M. Pace

Address:

215 Park Ave. Jr. # 200  
St. Cloud, MN 56301

